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FINDING OF NO SIGNIFICANT IMPACT

on the

ENVIRONMENTAL ASSESSMENT

for

RS 503-1(4)4
Foy's Canyon Road
Flathead County
Control # 0733

Submitted Pursuant to:
42 U.S.C. 4332(2)(c)

and

Section 2-3-104, 75-1-201, M.C.A.

by the

US Department of Transportation
Federal Highway Administration
Region 8

and the

State of Montana
Department of Transportation

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FINDING OF NO SIGNIFICANT IMPACT

FOR

RS 503-1(4)4
Foy's Canyon Road
Control # 0733

THE FEDERAL HIGHWAY ADMINISTRATION HAS DETERMINED THAT THIS PROPOSED PROJECT WILL HAVE NO SIGNIFICANT IMPACT ON THE HUMAN ENVIRONMENT. THIS *FINDING OF NO SIGNIFICANT IMPACT* IS BASED ON THE ATTACHED ENVIRONMENTAL ASSESSMENT WHICH HAS BEEN INDEPENDENTLY EVALUATED BY THE FEDERAL HIGHWAY ADMINISTRATION AND DETERMINED TO ADEQUATELY AND ACCURATELY DISCUSS THE NEED, ENVIRONMENTAL ISSUES, AND IMPACTS OF THE PROPOSED PROJECT AND APPROPRIATE MITIGATION MEASURES. IT PROVIDES SUFFICIENT EVIDENCE AND ANALYSIS FOR DETERMINING THAT AN ENVIRONMENTAL IMPACT STATEMENT IS NOT REQUIRED. THE FHWA TAKES FULL RESPONSIBILITY FOR THE ACCURACY, SCOPE, AND CONTENT OF THE ATTACHED ENVIRONMENTAL ASSESSMENT.

______________________ Date 6-18-97
Federal Highway Administration

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1.0 Coordination Process

The proposed action has been coordinated with all the appropriate federal, state and local agencies in order to comply with the National Environmental Policy Act and the Montana Environmental Policy Act. The notice of availability of the *Foys Canyon Road Environmental Assessment* (EA) was published in *The Daily Interlake* on September 16, 1996 and October 17, 1996. These notices can be found in Appendix A.

A Public Hearing was held on October 9, 1996 at Cavanaugh's in Kalispell, Montana. There were 55 individuals who signed the attendance sheet for the Hearing. A transcript of the Hearing is included in Appendix B. Twenty-four public comment letters were received and are in Appendix C.

There was general support expressed for the proposed action. Appendix C includes comment sheets, public letters, and agency letters received about the project, after publication of the *Foy's Canyon Road Environmental Assessment.*

1.1 Responses to Comments and Questions on the EA

Public Comments Received at October 9, 1996, Public Hearing and Responses to Comments

Responses to questions or comments received at the Public Hearing are provided below.

Pam Eliason: I am in favor of the roadway - get it done ASAP.
Response: Comment noted.

Unknown: How long before construction starts?
Response: 1998

Dale Sommerfield: 627 Foy's Canyon Road. I fully support the preferred alternative of this highway and I will be looking forward to when it is completed. Thank you.
Response: Comment noted.

Bruce Measure: I'm an attorney for three individuals opposed to the proposed Foy's Canyon Road project and the preferred alternative for a number of reasons. The first reason is that no Notice of Availability was available to the general public. It was published once in a limited edition newspaper in the valley. From what I have seen so far, no Notice of the Availability of the Environmental Assessment was available. In attempting to obtain the Environmental Assessment, we ran into substantial problems with both the Montana Department of Transportation Kalispell Office who claimed to have no knowledge of the document or where it might be available, as well as the contracted engineers, Carter & Burgess of Denver, Colorado, in particular, Mike Worrall of Missoula Montana. In addition, no Notice of Availability of when the comment period would end for the 404 Process was available. We are still unaware, from the EA, when it began or when the comment period ends.

The Storli farm, which sits in a good portion of the proposed alternative primarily between Stations 132+90.78 and 123+41.56, requires an individual 404 Permit and an appropriate graphic disclosure for the stream confluence and wetland #3. As it's presented in the proposal there will be an apparent 8-10 foot dike with very limited drainage right in the middle of the confluence of the two major streams and also right in the center of the 100-year floodplain which the proposed alternative follows for at least ½ mile. The EA does not disclose the important stream confluence area nor does it address the floodplain itself. In all previous meetings any information available minimized the floodplain and didn't have the FEMA floodplain maps available which made it impossible for anyone to comment on the floodplain's impact on both the proposal and the adjacent landowners. The EA does not show cross-sections of the elevated roadway proposed through the core of Zone A floodplain and through the confluence area. Thus an individual 404 permit should be prepared for Wetland No. 3. There are no material volumes in the cross-sections of the same. Figure 2.5 in the EA is quite misleading. In showing the proposed typical section, it does not show a rise of approximately 6-8 feet as it passes through the area just described, but instead shows a very gradual shoulder.

Another area of particular concern is Section 2.0 and Section 2.1 - the Introduction. It is noted in the Introduction that the proposed Foy's Canyon project does not meet secondary highway standards as delineated by the Federal Highway Administration. It is misrepresented as a major collector and it does not meet that classification either. So MDT, Flathead County, and the Feds should not even be considering it for inclusion in the Secondary Highway System because it doesn't meet any of the standard necessary. The Department of Transportation is proposing to backdoor this process by bringing it into federal highway standards as a secondary roadway and then concoct some reasons it should be considered a secondary highway.

An alternative that hasn't been explored -- MDT or Carter & Burgess, the engineer, having never made any bones about the traffic accidents prior to opposition by the local populist, suddenly for the Final EA concocted the proposition that the major reason to build the proposal is because of the rate of traffic accidents in the area. If traffic accidents were the problem, why then did not either the State, the Feds, or Flathead County follow the Manual and Uniform Traffic Control Devices Act and state law 61-8-202 and 203, and provide the necessary types of signage available - slow, turn, speed limits, etc.? There is a good reason why and that is because this is a boondoggle. You are trying to spend money that you have already appropriated on something that no one wants any longer.

There is no Avoidance Alternative for the Storli wetlands. The study of the wetland approach was done in October, the driest part of one of the driest years we have ever had. No studies were done and there is no illusion to any studies being done during the Spring when they are appropriate. No measurement was taken of ordinary high water levels although the local owners would state there is often standing water in the pasture where the proposed alternative will run.

No analysis of the 100-year floodplain is contained in the EA. There is no Avoidance and Mitigation Alternative to disturbing the 100-year floodplain and planning most of the proposal in the 100-year floodplain.

In addition I object to the format of all previous public hearings as there has been no record kept of the hearing whatsoever, nor any testimony garnered other than placards that are impossible for the individual highway department employees to take cogent comments. A good example: I spoke with Mike Worrall earlier this afternoon to address the floodplain issue. He got about four words on the placard and I was about two paragraphs into my comment. That is not an effective way to comment on the planning process. It may be fun to run a bunch of bureaucrats around the room, but it is highly ineffective and doesn't qualify as a public meeting or hearing with a record produced.

Prior to proceeding further, I would suggest that the Montana Department of Transportation hold additional public hearings, review the floodplain primarily in the confluence of the two creeks at the Storli farm, review the issue of federal classifications for secondary highways, offer some actual alternatives to reducing the traffic safety problems if in fact there are any, especially according to state law and the Manual Uniform Traffic Control Device Act, and provide some avoidance alternatives for the Storli wetlands, as well as make the public hearing process meaningful by taking actual testimony rather than prohibiting commmentors from commenting effectively.

Response:

1. *A Notice of Availability was published on September 16, 1996 in the Daily Inter Lake newspaper, Kalispell, Montana. A second Notice of Availability extending the EA comment period was published on October 17, 1996 in the Daily Inter Lake newspaper, Kalispell, Montana. The Daily Interlake is the only daily newspaper serving the Flathead Valley (including Kalispell) with daily circulation of 15,000. Copies of these notices are contained in Appendix A of this document. Copies of the EA were promptly mailed to anyone who made a request.*
2. *Section 404 of the Clean Water Act is administered by the US Army Corps of Engineers (Corps). The Federal Highway Administration does not issue a Notice of Availability for the Corps.*
3. *The Corps determines whether an individual 404 permit is required.*
4. *The maximum roadway elevation for this project is approximately seven feet above the existing roadway.*
5. *The EA discloses the Birch Creek and Patrick Creek confluence on page 4-36. The EA addresses the floodplain in Section 4.12, pages 4-35 to 4-40.*
6. *Aerial photos highlighting the FEMA delineated 100-year floodplain were available at the two public workshops held on November 15, 1995, and February 7, 1996.*
7. *Material volumes for fill in wetlands is provided in Table 4-5.*

8. *Figure 2-5 is a typical cross-section. Separate cross-sections were not shown for all variations on the typical cross-section, nor are they required in a NEPA document. A narrative discussion is included in Section 4.12 of the EA.*
9. *Secondary roads are those that have been functionally classified by the Montana Department of Transportation as either minor arterial or major collector and have been selected by the Montana Transportation Commission, in cooperation with the Board of County Commissioners to be placed on the Secondary Highway System. This has been done for Foy's Canyon Road, and it is included in the Secondary Highway System.*
10. *Signage is the responsibility of the County. MDT will install new signage appropriate to the improved roadway and in accordance with state and federal law upon construction of the Preferred Alternative.*
11. *Avoidance alternatives for wetlands is contained in Section 4.10.4 Practicable Alternatives, pages 4-28 through 4-30 of the EA.*
12. *The wetland delineation performed is adequate. There is no requirement to conduct delineations in spring.*
13. *The ordinary high-water line was determined in the field.*
14. *A floodplain analysis is provided in Section 4.12, pages 4-35 through 4-40 of the EA.*
15. *No significant encroachment on the floodplain will occur; therefore, no avoidance alternatives are required.*
16. *Mitigation of floodplain impacts is contained in Section 4.12.*
17. *The main objective of a public hearing is for people to be free to express their views on a project. FHWA guidelines and policies indicate that the two major elements of a public hearing are (1) that information be provided about the project, and (2) that public comment be received and considered in the process. There is no other requirement in any statute, ordinance, or policy regarding the exact format for a public hearing. The public open house format used by MDT for the public hearing on the EA is consistent with these two objectives*

    The Federal Highway Act and NEPA ***do not*** *set forth any specific criteria or format for the public meeting required to be held in connection with the EA. The statutes require only that the meeting provide for people to freely express their views. In addition to providing for reception and consideration of public comments, the meeting is to make available information about the project and answer questions. Nowhere in the statutes is a specific format specified. These two formats have certain advantages and disadvantages.*

    The open house format provides better opportunity for presentation of complete project information and personal interpretation of that information by the individual, since he or she can examine drawings and discuss them with project personnel. It also encourages public comment from those who may dislike speaking in front of a group. This format makes it possible for people to come and go as they like, without missing critical information. The time required to receive comments in this format is usually greatly reduced from other formats since more than one person can provide testimony *at a time. This format does not assure that everyone receives precisely the same information about the project, or that everyone in attendance hears all other viewpoints. However, there is full opportunity for discussion among those in attendance.*

The format of presentation before an assembled group has the advantage of assuring that everyone is getting exactly the same information about the project, and that everyone in attendance hears all speakers' views on the proposal. It does not provide for interactive discussion or review of materials, nor does it provide flexibility in timing of attendance. It can discourage people from providing testimony if they are hesitant to speak in front of a group or feel intimidated by others' views. Finally, it can require a ***great*** *deal of time to receive all testimony when many people wish to speak.*

MDT determined to hold the public hearing in the open house format because it believes the advantages of that format outweigh the advantages of the format of presentation before an assembled group. The main disadvantage of that format -- that all in attendance do not hear all speakers' views -- is offset by the availability of all comments received by project personnel at the public hearing displayed in writing for anyone to read. Also, all comments received at or after the public hearing are contained in this FONSI, which can be read by anyone requesting a copy. MDT's public hearing on October 9, 1996, was conducted in compliance with all of the requirements set forth in the Federal Highway Act and NEPA for such meetings.

18. *Additional public hearings are not necessary, all project impacts have been adequately addressed. Two public workshops were held, two newsletters to a mailing list of over 600 people were mailed, 55 people attended the public hearing, 50 attended the public workshop on November 15, 1995, 40 people attended the public workshop on February 7, 1996.*

Winnifred Storli: I live at 3420 Airport Road. My first comment is that I only got an assessment book after I asked for it, and there is absolutely no time to make a study of it. Next, I had no idea that the last two meetings were supposedly meetings for public comment because this just looks like a 3rd or 4th grade open house with all the pictures on the wall. There is no way of listening to what other people have to say. There were no minutes kept. No transcription of what people said. Even on this one, there is no interaction. So if you have a group and they hear each other, then there is interaction and it also means that somebody thinks of something for or against this. This, in my mind, is just a white wash.

My main concern is that I drove on this road today and yesterday and it's a winding country road and there are absolutely no road signs. Now from the time my kid was in 3rd grade and took the bus, all the people in the neighborhood have been requesting the County Commissioners and the road department for some signs. One of the main signs I needed was a stop sign by the junction of Foy's Canyon, Patrick Creek and Airport Road because there is a hill and a sharp turn and all the kids gather there by the church. There are only two signs at the end of the project - right by the Marshalls just before you get to Gardners, and on Airport Road, just after the blacktop hits the gravel road, they have a sign for a curve. On a road like that you are just asking for accidents, especially the ones we have where people slide off. Unless you know the road as well as I do, especially in the winter time, you are going to have tremendous accidents. Nobody in all these years has bothered to even address it from the County Commissioner's point of view or in this assessment. It is incredible that the cheapest and most obvious thing being asked for by everybody for years hasn't even been addressed. It is as though people have driven up the road with their blinders on. I would request that at least a stop sign be put immediately on the S curves and also have it in the proposal. Also I was wondering about negligence when this isn't done. Maybe the next time I go in the ditch, I should ask the county to pay for the damages.

This seems just absolutely universal that the departments don't follow the rules they make. There is the Manual of Uniform Traffic Control Devices which is counted as being a simple, safe and reasonable safety device, and there is not a word of it in your assessment. Also, I find it very strange that all these years, the contrary view was held - that the gravel and the winding nature of the road prevented any serious accidents. Accidents weren't the reasons for building this road until very recently. So I suppose this is because all other avenues have been exhausted. I am also outraged that I can't get any basic data on the accidents. I can easily check this out with the Highway Patrol and the ambulance runs, but the Highway Department refuses to release this information. They say it is confidential. I just want the data.

I'm not sure who is responsible, but the wetlands right by us are already being drained and the stream courses have been changed. I see this being totally ignored. Wetland #2, 3 & 4 have been drained. I'm wondering if this is part of the ... have you already started changing the road? What is happening?

On the wetlands next to the Storli farm, the stream has already been changed because the dams have been taken down, new culverts put in, the creek straightened out, and the water emptied out of the ponds. So whatever maps you have now are no longer current because this floodplain and wetland has been changed. The ducks are gone, the muskrats are gone, there are no more herons. I don't know what has happened with the fish, but I know that when there is a spring runoff it will change further because instead of having a winding stream, now you have more or less an irrigation ditch. I wonder if this has been...is this a part of the new road plan or not?

Response:

1. *There is no requirement for an EA to be sent to individuals automatically. All requests for copies of the EA after the Notice of Availability was published were fulfilled in a timely manner.*
2. *The comment period was extended to October 25, 1996. The original comment period was within federal regulations.*
3. *The previous two public workshops were described in two newsletters which explained their purpose.*
4. *See response 17 to Bruce Measure.*
5. *The Public Hearing held on October 9 had a transcriber present and transcripts were prepared. The previous two public workshops held on November 15, 1995 and*

February 7, 1996 had meeting minutes prepared and copies of those meeting minutes are included in the EA appendix.

6. *Road signs are the responsibility of the County. The County's Road and Bridge Department has stated that all signage is in accordance with state law.*
7. *According to the Road and Bridge Department of Flathead County, the Manual of Uniform Traffic Control Devices (MUTCD) is currently followed. Upon construction of the Preferred Alternative, new signage will be installed by MDT as part of the project in full conformance with MUTCD and appropriate to the new roadway.*
8. *MDT has received your request for data source documents for accident rate and accident severity. Section 61-7-114, MCA is a state law requiring that certain information regarding accidents is not released to the public. The law specifically states that this information is to remain confidential. Therefore, your request for the data source documents cannot be fulfilled, by law. This information is, however, summarized in the EA in Section 2.3.*
9. *Any draining of wetlands in the project area is not part of the Foy's Canyon Road project and was not undertaken by the MDT.*
10. *If wetlands have been drained, since the EA was written, impacts to wetlands may be reduced. Therefore the analysis contained in the EA is overly conservative. There is no need or requirement to change the EA to reflect reduced impacts, if in fact this is the case.*

David Cik: 315 Orchard Ridge Road. I moved there about seven years ago and in that time in the little bit of stretch of Foy's Canyon Road I can see from my house, there have been four roll-overs with teenagers involved. In that time, the dust problem has been tremendous every summer and continues to be so. Every time it rains, the road gets large potholes and washboards. It doesn't seem to get graded enough as it is. Ever since I moved in I've heard promises and promises, over and over that the road would be paved and I would like to see it paved as soon as possible.

Response: *Comment noted.*

JoAnn Oftedahl: I'm wondering, after they make the cuts in banks of the road, what will they do to restore the raw open side of the road where they make those cuts? When you go along Foy's Lake Road where they met the highway, the cut has never been restored. It is just a big, ugly, bare dirt hill and it washes down onto the road whenever we have heavy rains or snowmelts in the Spring. I would like to know if they would consider restoring the beauty, planting shrubs or trees in there? Try to restore some plant growth there. If they are going to go ahead with this program, I think they should try to put plant life in those areas so it doesn't erode and look so bare.

Response: *Topsoil will be placed on 3:1 slopes or steeper. Seeding of slopes flatter than 3:1 is standard MDT procedure. Rock cuts, of course, cannot support vegetation.*

Artik Berdimurat: I live at 425 Orchard Ridge. I am very much in favor of having the road improved - the sooner, the better. Safety is my number one concern. I feel the road in many areas is much too narrow especially during the winter months. When the road is slippery and vehicles try to pass each other they come within inches or less than a foot - it is not a safe condition.

I feel the dust is a hazard. Not only is it an annoyance for one's respiratory tract but at certain times of the day when the sun is low or in the morning when the sun is coming up, it is nearly impossible to see ahead with the combination of sunlight and dust particles in the air. I also feel the general use of the road for families living in the area is difficult because of the dust. I wouldn't want to jog or ride a bicycle along that area because I would be choking on the dust continually. The roughness of the road is another concern of mine. I feel that the roughness is just very detrimental to one's vehicles and I feel that should be taken care of - the swifter, the better.
Response: Comment noted.

Unknown: Regarding the sanding of the main hill, how are they going to sand the new part? They need to maintain the road in the winter. Maintenance is problem - we can't even get sand put on the road. The road is narrow in some parts and there is nowhere to go if an accident occurs. The new road is already eroding around the guardrails and it was just done. If they are not fixed before runoff occurs, you have a big problem. So how are they planning to maintain the new road?
Response: The County is responsible for road maintenance including sanding. The County will treat it same as now, including plowing snow and sanding.

Jane Powell: 1719 Foy's Lake. I am in favor of the Foy's Canyon Road Improvement Project.
Response: Comment noted.

Leonard Oftedahl: 100 Foy's Canyon Road. I have commented a couple of times before and am not opposed to progress, but turning this project over to the state will cost the taxpayers more and the specs demand more from the landowners who adjoin the roadway. The cut-slopes along Foy's Lake are ugly and would probably be the same on the new section of the road.
Response: Visual impacts are addressed on page 4-48 of the EA. Cut and fill sections will result in noticeable visual impacts.

Unknown: I am really in favor of the preferred alternative secondary roadway design and do think that it would save the taxpayers a lot of money. It seems that through government channels, people will always usurp more power and/or money needed than if they had to face property owners directly and ask for the money. Please consider the cost and the impact.
Response: Comment noted.

Roy Robinson: 602 S. Foy's Lake Drive. I am concerned that this project would: a) increase traffic; and b) destroy many large trees that make this area so unique. So I propose that the road not be widened, perhaps paved. "No Build Alternative" unless it can be done without destroying that thing that makes it special. Is it possible to build a bike path instead of another lane?
Response: Comment noted. Construction of a bike path instead of widening the existing road would not meet purpose and need of the project.

Unknown: Why have so many meetings - just do it!
Response: Comment noted.

Unknown: Pave the existing road, no widening, sell land back to previous owners at purchase price. Improvements will increase speed.
Response: Comment noted.

Winnifred Storli: (written comment) EA does not show proposal's impact on Birch & Patrick Creek confluence on Storli farm. Individual 404 permit needed for Storli farm floodplain/wetland #3. EA does not show cross sections of elevated roadway proposed through the core of Zone A floodplain and through the confluence area. EA does not disclose important stream confluence area. Individual 404 permit and appropriate graphic disclosure is needed for the stream confluence and wetland #3 area.

Response:

1. *A floodplain analysis is provided in Section 4.12, pages 4-35 through 4-40 of the EA.*
2. *The Corps determines whether an individual 404 permit is required.*
3. *Figure 2-5 is a typical cross-section. Separate cross-sections are not required for all variations on the typical cross-section. The maximum roadway elevation for this proposed project is approximately seven feet above the existing roadway.*
4. *The EA discloses the Birch Creek and Patrick Creek confluence on page 4-36.*

Sharlon L. Willows:

1) Foy's Canyon Road does not qualify for 86% federal funding.
2) Modernize the existing roadway to paved county standards.
3) Use signs to reduce speeds and address safety issues.
4) Reduce taking of right-of-way through wetlands, floodplains, and prime farmlands (Storli farm).
5) EA does not show impacts on Birch/Patrick Creek confluence.
6) Amount of fill for road development across core of floodplain at Storli farm is not disclosed.
7) Need site specific 404 for Storli farm.
8) Storlis own the confluence area - what is the proposal for the confluence (building the road over the confluence)? Requires full disclosure.
9) Has reduced right-of-way acquisition through floodplain core (Zone A/FEMA) been considered yet?
10) The elevated roadbed cross section through 100-year floodplain (at Storli farm) is not disclosed in EA.
11) A Sta. Pt. Map is needed with location of stream crossings in EA/404 process.
12) How does this project meet "Major Collector" Functional Classification? EA does not address.
13) Implement Section 61-8-202 & 303, MCA, now.
14) EA does not show proposal's impact on Birch & Patrick Creek Confluence on Storli farm. Individual 404 permit needed for Storli farm floodplain/wetland #3. EA does not show

cross sections of elevated roadway proposed through the core of Zone A floodplain and through the confluence area. EA does not disclose important stream confluence area. Individual 404 permit and appropriate graphic disclosure is needed for the stream confluence and wetland #3 area.

Response:

1. *Secondary Road 503 is on the State secondary highway system and thus qualifies for 86% federal funding.*
2. *This alternative is discussed in Section 3.2 of the EA.*
3. *Signage is the responsibility of the County. MDT will install new signage appropriate to the improved roadway and in accordance with state law upon construction of the Preferred Alternative.*
4. *Reduced right-of-way would not provide an adequate clear zone.*
5. *A floodplain analysis is provided in Section 4.12, pages 4-35 through 4-40 of the EA.*
6. *Floodplain impacts are described in Section 4.12 of the EA. Site specific fill in floodplains is not required in the EA, but will be provided in the Floodplain Permit application to the County.*
7. *The Corps determines whether an individual 404 permit is required.*
8. *Site specific information by property owner is not required. See response to comment 6 above.*
9. *See response to comment 4 above. Alternatives are discussed in Section 3.0 of the EA.*
10. *Figure 2-5 is a typical cross-section. Separate cross-are not required for all variations on the typical cross-section. The maximum roadway elevation for this proposed project is approximately seven feet above the existing roadway.*
11. *The Corps is responsible for 404 issues. The maps included in the EA are sufficient to depict stream crossings.*
12. *The Montana Department of Transportation completed its functional classification of highways, roads and streets in December, 1992 as required by the Federal Highway Administration (FHWA). Montana Secondary 503 (Foys Canyon Road) was functionally classified as a major collector prior to 1992 and remains unchanged. Montana's functional classification was completed in accordance with the US Department of Transportation and FHWA Highway Functional Classification Concepts, Criteria and Procedures manual revised March 1989. Roads are classified by function and not traffic volume. The Flathead County Commissioners have concurred on the functional classification of Foys Canyon Road to a major collector status.*
13. *County is responsible for signage and has stated that signage is in compliance with state law. Montana law regarding speed restriction is "careful and prudent manner."*
14. *See response to Winnifred Storli above.*

Unknown: (written comment) EA does not show proposal's impact on Birch & Patrick Creek confluence on Storli farm. Individual 404 permit needed for Storli farm floodplain/wetland #3.

EA does not show cross sections of elevated roadway proposed through the core of Zone A floodplain and through the confluence area. EA does not disclose important stream confluence area. Individual 404 permit and appropriate graphic disclosure is needed for the stream confluence and wetland #3 area.

Response: *See response to Winnifred Storli above.*

Devar Gardner: He wants to see less trees taken on his property. He wants the project to go as soon as possible.

Response: *Comment noted. Avoidance of trees will be done where feasible.*

Paul Shelt: 265 Foy's Canyon Road. Will the geometry of the culvert by wetland #1 affect drain field at property?

Response: *Measures will be taken to ensure that the culvert adjacent to Wetland #1 will not affect drain field at 265 Foy's Canyon Road.*

Partial destruction of wetland #1 should be revisited - it either should be relocated totally or avoided totally.

Response: *Avoidance alternatives to wetlands impacts were addressed in Section 4.10 of the EA. Wetlands were avoided to the extent practicable, as described in the EA.*

What are the calculations used to make sure the 0.5 foot maximum rise in floodplain elevation is met?

Response: *Calculations used to make sure 0.5 feet maximum rise in floodplain elevation is met were the USGS flood frequency equation for the flows to determine the 100-year flood. Culvert calculations were performed using the FHWA culvert analysis HY8.*

Where is the stream confluence area? Does the road go on top of it? This should be in the EA.

Response: *Figure 4-8 of the EA shows the Birch and Patrick Creek confluence area and location of the Preferred Alternative.*

Wetland #4 has been drained and re-channeled. Because of this change, the EA is not accurate and must be redone to address this.

Response: *If wetlands have been drained, since the EA was written, impacts to them may be reduced. Therefore the analysis contained in the EA is overly conservative. There is no need or requirement to change the EA to reflect reduced impacts, if in fact this is the case.*

Should wetland #3 and floodplain confluence area have an individual 404 permit?

Response: *404 permit determination are under the jurisdiction of the Corps.*

Proposal will cross wetland areas near the Storli meadows.

Response: *This is correct. Wetland #3 will be crossed by the Preferred Alternative.*

I am concerned about roadway impacts to floodplain. The road goes right through the middle of confluence.

Response: Floodplain impacts are addressed in Section 4.12 of the EA.

Why can't road be shifted to miss wetland #1?

Response: Alternatives to avoid impacts to wetlands are addressed in Section 4.10 of the EA.

I want wetland #1 protected. Should preserve wetland #1 and shift road north.

Response: Alternatives to avoid impacts to wetlands are addressed in Section 4.10 of the EA.

Will wetlands impacts need to be mitigated? Will this delay the process?

Response: The Corps will determine whether wetland impacts need to be mitigated. If required, mitigation efforts may or may not delay the process.

Partial destruction of Wetland #1 should be revisited. It either should be relocated totally or avoided totally.

Response: Avoidance alternatives to wetlands impacts were addressed in Section 4.10 of the EA. Wetlands were avoided to the extent practicable, as described in the EA.

I am concerned that the wildlife and domestic animals will be killed with excessive speeds.

Response: Increased vehicle speeds may increase vehicle/animal collisions.

Question: Did we count seasonal traffic counts?

Response: Seasonal traffic counts were not conducted because the S503 is not a tourist-oriented route.

The existing road is appropriate for the traffic on it.

Response: Comment noted. Purpose and need for the proposed project is discussed in Section 2.1 of the EA.

Tired of seeing roll-overs on my property.

Response: Comment noted.

Intermittent icy spots show and bare. Pavement will be slicker than gravel when icy.

Response: County maintenance including sanding will continue after the roadway is paved.

Ice will still form in the canyon. Just because the road is improved and clear zone, there still may be ice due to cliffs.

Response: We agree, ice may continue to appear in shade area of canyon, but less so than currently due to the increased clear zones.

Consider using a coarser pavement surface for ice.

> ***Response:*** *Experimental surfaces are being investigated and there is no evidence to suggest they will work. A coarser pavement surface could be maintenance problem.*

Have seen yet another roll-over at our fence (once per year). Our fence is dilapidating. Our horses want to escape.

> ***Response:*** *Comment noted.*

Our children's school bus almost tipped over last year with our kids in it.

> ***Response:*** *Comment noted.*

Bus Stop Concern. Need better signing - warning (curves) and bus stops.

> ***Response:*** *Signage is the County's responsibility. Upon construction of the Preferred Alternative. New signage will be installed by MDT in accordance with state law and appropriate to the new roadway.*

I am concerned for my son's safety on the school bus that travels this road.

> ***Response:*** *Comment noted.*

There should be an adequate bus pull-off where the project ends. School bus is unsafe on paved road. Paving results in higher speeds and more traffic.

> ***Response:*** *A bus pull-off was not included because by law school buses must stop on traffic lanes.*

Speed reduction signs approaching project (on Airport Road). There is no speed enforcement in the area.

> ***Response:*** *Traffic law enforcement is the State Highway Patrol and the County's responsibility.*

Improvements will increase travel on Foy's Canyon and Airport Road.

> ***Response:*** *As discussed in Section 4.3.2 of the EA, increased traffic will occur even without the Preferred Alternative. The Preferred Alternative will result in changes to the area, including increased traffic, to occur sooner than the No Build Alternative.*

There was a recent roll-over accident (3 weeks ago) just outside my house - with injuries.

> ***Response:*** *Comment noted.*

I was hit near the curve at Orchard Ridge about 10 years ago. I would have rolled the truck if there had not been a snow bank.

> ***Response:*** *Comment noted.*

Vehicles will speed more with improvements.

> ***Response:*** *Comment noted.*

Build it as it was engineered - no slip-shod job. I have seen many accidents or near misses.
Response: *Comment noted.*

People drive too fast on paved roads. Why pave Foy's Canyon Road?
Response: *Comment noted, refer to Purpose and Need, Section 2-1, of the EA.*

There are safety problems for pedestrians and bikes because of poor visibility and no shoulder.
Response: *Comment noted.*

Gravel roads are unsafe for bikes.
Response: *Comment noted.*

Safety concerns - reduce speed.
Response: *Traffic law enforcement is the responsibility of the State Highway Patrol and the County.*

The improvements will increase speed which will increase accident severity. A speed limit is needed.
Response: *A speed zone will be determined by the County Commission.*

Would like to see accidents reduced. Most accidents go unreported.
Response: *Comment noted.*

I almost got hit by a logging truck recently.
Response: *Comment noted.*

I have personally seen two accidents at the church and one at Gardner's curve.
Response: *Comment noted.*

I want to see the project go now! I am concerned about safety. I am concerned about kids rolling cars.
Response: *Comment noted.*

The project is worth doing just for accident reductions.
Response: *Comment noted.*

Should implement section 61-8-202 and 203, MCA, on this section now. Mitigation measures should be implemented if there is a concern for safety, i.e., signage, etc.
Response: *County is responsible for signage and has stated that signage is in compliance with state law. Montana law regarding speed restriction is "careful and prudent manner."*

I want the preferred alternative built. I had a near accident this past weekend.
Response: *Comment noted.*

The road is hard on our vehicles. We fear for our daughter's safety, she drives it every day.
Response: *Comment noted.*

Will law enforcement be increased? It would be nice to have increased law enforcement regarding speeds.
Response: *Traffic law enforcement is the County's and State Highway Patrol's responsibility.*

The improved road may increase traffic because it would be a scenic loop route.
Response: *Comment noted.*

I have pulled a lot of people out of the ditch.
Response: *Comment noted.*

Improve the road for safety, dust, mud and no more tar.
Response: *Comment noted.*

I fear that the proposed improvements will cause higher speeds. Airport Road experiences high speeds already.
Response: *Traffic law enforcement is the State Highway Patrol's and County's responsibility.*

Cars go east from Airport Road way too fast. I think paving the road will encourage increased speeds and increased traffic.
Response: *Traffic law enforcement is the State Highway Patrol's and County's responsibility.*

The preferred alternatives has a lot of pluses but we are concerned about speed.
Response: *Traffic law enforcement is the State Highway Patrol's and County's responsibility.*

I am concerned about kids riding bikes on this road. On the last curve the cars go 45-50 mph. I am concerned about controlling speeds.
Response: *Traffic law enforcement is the State Highway Patrol's and County's responsibility.*

Does the Clean Air Act apply to this project because of the amount of dust in a small area?
Response: *Air quality is addressed in Section 4.7 of the EA. Transportation conformity regulations of the Clean Air Amendments of 1990 do not apply to this project.*

Dust is a problem.
Response: *Comment noted.*

I want the preferred alternative built. The dust is horrible.
Response: *Comment noted.*

I want to see the project go now! I am tired of eating dust.
Response: *Comment noted.*

Why should anyone live on a hazardous and dusty road?
Response: *Comment noted.*

I live on Orchard Ridge. I'm in favor of improved road because of dust, roughness, safety (s-curves are bad), access of public, wear and tear on vehicles.
Response: *Comment noted.*

Our brand new house gets a soot layer on it. The dust hangs in the air at night continuously. Smells like dry wall because of dust.
Response: *Comment noted.*

Family members have allergies and dust makes it worse.
Response: *Comment noted.*

There is dust for bikes and pedestrians on gravel surfaces.
Response: *Comment noted.*

Straighten road but do not pave.
Response: *Although this alternative was not considered in the EA, it would not meet purpose and need for the project and is not eligible for federal or state funding.*

How will access be provided to Foy's Community Center and the caretakers facility?
Response: *Access will be maintained. Portions of the present traveled way will be used to provide access.*

What's to become of the corner left on Herron property that is cut off with first corner?
Response: *This property will continue to be Herron property. It will be the landowners' decision on the ultimate outcome of this parcel.*

Why not widen and improve the road but not pave it - secondary standards have not been met, dust, maintenance.
Response: *Although this alternative was not considered in the EA, it would not meet purpose and need for the project and is not eligible for federal or state funding.*

Why can't the road be straightened and kept gravel? Would maintenance be less with gravel or asphalt?

> ***Response:*** *Although this alternative was not considered in the EA, it would not meet purpose and need for the project and is not eligible for federal or state funding. Maintenance costs would be less with asphalt than current maintenance costs for a gravel surface.*

Why is there a sharp curve at project beginning?

> ***Response:*** *The curve at the beginning of the project meets design standards for the design speed of 64 kph (40 mph).*

I am in favor of the preferred alternative as originally designed. Just build it!

> ***Response:*** *Comment noted.*

Keep the shoulder for horse usage.

> ***Response:*** *The Preferred Alternative will provide a shoulder that could be used by horses.*

I just wanted the road improved a little - curves straightened and a little paving. Did not want a super highway.

> ***Response:*** *Alternatives considered and not advanced and reasons for not advancing them are described in Section 3.2 of the EA.*

Build it as it was engineered - no slip-shod job. I have seen many accidents or near misses.

> ***Response:*** *Comment noted.*

Concerned about intersection of Airport Road and Shelter Valley Road - too sharp, needs to be straightened out.

> ***Response:*** *The Shelter Valley Road alignment is not on the secondary highway system and is not part of this proposed project.*

Prefer alignment that uses public school land, not near my house (noise and drain field concern).

> ***Response:*** *Alternatives are discussed in Section 3.0 of the EA. Noise impacts are addressed in Section 4.8 of the EA. Appropriate measures will be taken to ensure that no project-related impacts will occur to the existing septic tank drainfield at this location.*

Need walking/biking area - wider shoulders (3 feet or more).

> ***Response:*** *Wider shoulder for a walking/biking area would result in additional impacts to wetlands, floodplains, wildlife habitat and would require the acquisition of additional right-of-way from adjacent property owners.*

Design the road with bike path, walkway, or hikeway. However, I haven't noticed hikers or pedestrians.

> ***Response:*** *Wider shoulder for a walking/biking area would result in additional impacts to wetlands, floodplains, wildlife habitat and would require the acquisition of additional right-of-way from adjacent property owners.*

You should have included a separate bike lane or path.

Response: *Wider shoulder for a walking/biking area would result in additional impacts to wetlands, floodplains, wildlife habitat and would require the acquisition of additional right-of-way from adjacent property owners.*

I would like to see a bike lane or equestrian lane considered in the project facilities. There are a lot of walkers (dogs. etc.).

Response: *Wider shoulder for a walking/biking area would result in additional impacts to wetlands, floodplains, wildlife habitat and would require the acquisition of additional right-of-way from adjacent property owners.*

Orchard Ridge resident wants the road moved east away from trees.

Response: *Alternatives considered are described in Section 3.2 of the EA.*

Cut slopes (like Foy's Lake Road) are a visual impact. Aesthetics are important. Avoid large cut slopes, purchase additional right-of-way if necessary.

Response: *Visual impacts are addressed in Section 4.15 of the EA.*

Old growth trees will be cut with wider road. Pave existing road as it.

Response: *Alternatives considered are described in Section 3.2 of the EA.*

Regarding maintenance in the winter. Are cost savings account for?

Response: *Maintenance costs are addressed in Section 2.7 of the EA. Maintenance costs will be reduced with the paved surface included with the Preferred Alternative.*

Overall maintenance must be very high. The improvements will decrease costs.

Response: *Maintenance costs are addressed in Section 2.7 of the EA.*

Maintenance by the County in the summer is not bi-weekly.

Response: *The maintenance schedule was provided by Flathead County Road and Bridge Department.*

Maintenance costs will continue to grow without improvement.

Response: *Comment noted. Maintenance costs are addressed in Section 2.7 of the EA.*

The maintenance statement that gravel is put on every two weeks is wrong.

Response: *The maintenance schedule was provided by Flathead County Road and Bridge Department.*

Does the county really pay for maintenance now?

Response: *Yes, the County pays for maintenance of Foy's Canyon Road.*

How long before construction?

Response: Construction could occur as early as 1998.

Will a decision be made soon? Hopefully the road will go ahead or let us have our property back at the same price as the purchase price.

Response: A decision will be made when all comments have been considered.

Why hasn't it been paved already? No federal funds - not purpose and need.

Response: Background of the proposed project is addressed in 2.1.2 of the EA.

It is awful that construction is delayed to 1998.

Response: Comment noted.

I want to see the project go now! I am tired of eating dust.

Response: Comment noted.

In Purpose and Need - should acknowledge court case DV95-066A - the CEX was determined not sufficient.

Response: Comment noted. Purpose and need relates to purpose and need of improvements to the existing roadway.

Need a cross-section for the road through the farm that shows the fill area.

Response: The EA addresses floodplain impacts in Section 4.12. Individual cross-sections of individual property owners is not provided, a typical cross-section is provided in Figure 2-5.

Land in the vicinity of the first curve is owned by School District #5. This is not acknowledged in the EA.

Response: Comment noted.

There appears to be several errors in the EA that I know about. How many are there that I don't know about?

Response: There may be several errors in the EA which will be acknowledged in this document to the best of our ability.

I feel I should have been sent an EA since I submitted a substantive comment.

Response: Individuals who requested a copy of the EA were mailed a copy. Additional copies of the EA were available for public review at two locations in Kalispell and at the Public Hearing. There is no requirement to send persons making "substantive comments" a copy of the EA without their requesting one first.

I am concerned because I sent a written request for copy of the EA and did not receive one. Then I had to call and request one. I did receive one on October 4,1996.

> ***Response:*** *All written requests for copies of the EA were promptly filled. We are unaware of anyone making a written request that did not receive a copy.*

Just get it done!

> ***Response:*** *Comment noted.*

Make the improvement - the sooner the better.

> ***Response:*** *Comment noted.*

We have a nice car that is getting slowly trashed, paint chips, creaks, alignment.

> ***Response:*** *Comment noted.*

Cars are taking a beating on existing road - washboarded. It needs to be paved.

> ***Response:*** *Comment noted.*

I won't buy a new car until the road is paved. Cars as so dirty now.

> ***Response:*** *Comment noted.*

Recent news articles said that Foy's Canyon Road has no more traffic than Camas Creek Road in the winter.

> ***Response***: *Comment noted.*

Interlake Article within the last few weeks stated that "the project has been stopped." I believe it was an AP article regarding statewide funding.

> ***Response***: *We are unaware of a news article stating that "the project was stopped." The environmental documentation process for this project is continuing to move forward.*

Why not use Alternative B?

> ***Response:*** *Reasons for not advancing alternatives are found in Section 3.2 of the EA.*

I would prefer the no-build or the alternative to just pave the existing road.

> ***Response:*** *Alternatives are discussed in Section 3.0 of the EA.*

I want to see road improvements made as proposed.

> ***Response:*** *Comment noted.*

I want the road paved. It is a good idea. Need to control speeds.

> ***Response:*** *Comment noted.*

Preferred alternative is most workable plan.

> ***Response:*** Comment noted.

I am surprised at the length of utility relocates.
Response: *Comment noted.*

I want to see the proposed alternative built for the following reasons: dust, safety, wear and tear on vehicles, don't want to see county loose $500,000 in right-of-way purchases.
Response: *Comment noted.*

I think the improvements are needed.
Response: *Comment noted.*

It doesn't look like the Storlis are farming. They own a hotel in town.
Response: *Comment noted.*

Why can't Storli farm operate with preferred alternative?
Response: *We are not aware whether or not farming activities could continue with the Preferred Alternative.*

Why can't Storlis be avoided?
Response: *Alternatives to avoid impacts to the Storli property were analyzed. Reasons for not advancing these alternatives are found in Section 3.2 of the EA.*

Like the format of the meeting. There is a better opportunity for all people to speak. I am too shy to speak in large groups.
Response: *Comment noted.*

I am concerned that the format of this meeting is not a proper public hearing per regulations.
Response: *See response to Bruce Measure #17.*

I don't think that an open house is a proper format for a public hearing.
Response: *See response to Bruce Measure #17.*

I live behind the church and I support the project.
Response: *Comment noted.*

Will the name of the road change? Airport Road currently extends to Patrick Creek Road, then becomes Foy's Canyon Road.
Response: *It is unknown whether the road names will change. This decision would be made by the County Commissioners.*

Can't get legal access to our property until utilities are moved and PTI won't move it until road is paved (or we have to pay $10,000).
Response: *Comment noted.*

Why is this a priority? Why is this a secondary road system?

> ***Response:*** *Prioritization and explanation of why the road is on a secondary road system is contained in Section 2.1.2 of the EA.*

Table 4-5 in the EA appears to have a typographical error.

> ***Response:*** *Table 4-5 in the EA had two inaccuracies. The total existing area of wetlands as shown in the EA was 6.75 acres, it should be 7.17 acres. The existing area of wetland site number one as shown in the EA was 0.28 acres, it should be 0.7 acres.*

2.0 Selection of the Preferred Alternative

Based upon the *Foy's Canyon Road Environmental Assessment*,, the Public Hearing transcript and the summary of comments and responses, the Federal Highway Administration (FHWA) has determined that the alternative as described on pages 1-1 to 1-3 of the *Foy's Canyon Road Environmental Assessment* is the preferred alternative.

Appendix A

Appendix A

Public Notices

No. 9444
NOTICE OF AVAILABILITY
Environmental Assessment
and Public Hearing
Foys Canyon Road Project
Flathead County, Montana

The Federal Highway Administration (FHWA) and the Montana Department of Transportation (MDT) are proposing to reconstruct and pave Foys Canyon Road. Copies of the Environmental Assessment are available for public review at the following locations in Kalispell:

- Flathead County Public Library 247 1st Avenue East
- Flathead County Commissioners 800 South Main

A public hearing for the proposed action will be held on Wednesday, October 9th, 1996 from 5:30 P.M. to 7:30 P.M. at Cavanaugh's at Kalispell Center, 20 North Main Street, Kalispell.

Written comments can be submitted at the public hearing or submitted to: Mr. Joel Marshik, Environmental Services Manager, Montana Department of Transportation, 2701 Prospect Avenue, Helena, 59620-1001 or Mr. Dale Paulson, Environmental Coordinator, Federal Highway Administration, Montana Division, 301 S. Park St., Drawer 10056, Helena, 59626-0056

Comments must be post marked no later than October 18, 1996.

September 16, 1996

STATE OF MONTANA

FLATHEAD COUNTY

AFFIDAVIT OF PUBLICATION

KAI WILLDEN BEING DULY SWORN, DEPOSES AND SAYS: THAT SHE IS LEGAL CLERK OF **THE DAILY INTER LAKE**, A DAILY NEWSPAPER OF GENERAL CIRCULATION, PRINTED AND PUBLISHED IN THE CITY OF KALISPELL, IN THE COUNTY OF FLATHEAD, STATE OF MONTANA, AND THAT THE **NO. 9444 NOTICE OF AVAILABILITY** A COPY OF WHICH IS HERETO ATTACHED, WAS PRINTED AND PUBLISHED IN THE REGULAR AND ENTIRE ISSUE OF SAID PAPER, AND IN EACH AND EVERY COPY THEREOF ON THE DATES OF **SEPTEMBER 16, 1996.**

THE RATE CHARGED FOR THE ABOVE LEGAL PRINTING DOES NOT EXCEED THE MINIMUM GOING RATE CHARGED TO ANY OTHER ADVERTISER FOR THE SAME PUBLICATION, SET IN THE SAME SIZE TYPE AND PUBLISHED FOR THE SAME NUMBER OF INSERTIONS.

Kai Willden

Subscribed and sworn to before me this AD SEPTEMBER 16, 1996.

Notary Public for the State of Montana
Residing in Kalispell
My Commission expires 5/30/99

No. 9580

NOTICE OF AVAILABILITY

Environmental Assessment

Foys Canyon Road Project

Flathead County, Montana

The Federal Highway Administration (FHWA) and the Montana Department of Transportation (MDT) are proposing to reconstruct and pave Foys Canyon Road. Copies of the Environmental Assessment are available for public review at the following locations in Kalispell:

Flathead County Public Library
247 1st Avenue East

Flathead County Commissioners
800 South Main

Written comments can be submitted:

Mr. Joel Marshik, Environmental Services Manager, Montana Department of Transportation, 2701 Prospect Avenue, Helena, MT 59620-1001 or

Mr. Dale Paulson, Environmental Coordinator, Federal Highway Administration, Montana Division, 301 S. Park St., Drawer 10056, Helena, MT 59626-0056

Comments were originally due on October 18, this comment period has been extended. Comments must be postmarked no later than October 25, 1996.

October 17, 1996

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FLATHEAD COUNTY

AFFIDAVIT OF PUBLICATION

KAI WILLDEN BEING DULY SWORN, DEPOSES AND SAYS: THAT SHE IS LEGAL CLERK OF **THE DAILY INTER LAKE**, A DAILY NEWSPAPER OF GENERAL CIRCULATION, PRINTED AND PUBLISHED IN THE CITY OF KALISPELL, IN THE COUNTY OF FLATHEAD, STATE OF MONTANA, AND THAT THE **NO. 9580 NOTICE OF AVAILABILITY** A COPY OF WHICH IS HERETO ATTACHED, WAS PRINTED AND PUBLISHED IN THE REGULAR AND ENTIRE ISSUE OF SAID PAPER, AND IN EACH AND EVERY COPY THEREOF ON THE DATES OF **OCTOBER 17, 1996.**

THE RATE CHARGED FOR THE ABOVE LEGAL PRINTING DOES NOT EXCEED THE MINIMUM GOING RATE CHARGED TO ANY OTHER ADVERTISER FOR THE SAME PUBLICATION, SET IN THE SAME SIZE TYPE AND PUBLISHED FOR THE SAME NUMBER OF INSERTIONS.

Kai Willden

Subscribed and sworn to before me this AD OCTOBER 17, 1996.

Notary Public for the State of Montana
Residing in Kalispell
My Commission expires 5/30/99

Appendix B

Appendix B

Public Hearing Transcript

and

Information Provided at the Public Hearing

TRANSCRIPT
FOY'S CANYON ROAD
PUBLIC HEARING

Wednesday, October 9, 1996
5:30 - 8:00 p.m.
Cavanaugh's - Lake McDonald Meeting Room
20 North Main Street
Kalispell, MT 59901

A Public Hearing for Foy's Canyon Road was held in Kalispell, October 9, 1996, at Cavanaugh's, Lake McDonald Meeting Room. Fifty five (55) people attended the Public Hearing (sign in sheets attached) which was open-house format, no formal presentation was given. Project information was available to the public on the sign in table (attached). Comments were received from the public by way of (1) personal testimony given to a transcriber available throughout the evening, (2) personal comments given to project personnel on 5 x 8 cards which were immediately displayed in the comments section wall area for the public to view, and/or (3) written comments dropped in a comment box located near the transcription table. All project personnel responsible for the project were available throughout the evening to answer questions, receive comments, and talk with the public about any concerns they had regarding the project:

Project personnel present:

Jeanette Lostracco, Carter & Burgess (Denver)
Gina McAfee, Carter & Burgess (Denver)
Mike Worrall, Carter & Burgess (Missoula)
Kathy Harris, Carter & Burgess (Helena)
Jeremy Keene, Carter & Burgess (Missoula)
Stephanie Denny, Carter & Burgess (Missoula)
Joe Murphy, Carter & Burgess (Missoula)
Joel Marshik, Montana Department of Transportation (Helena)
Dave Dreher, Montana Department of Transportation (Helena)
Gordon Stockstad, Montana Department of Transportation (Helena)
Bill Squires, Montana Department of Transportation (Helena)
Dale Paulson, Federal Highway Administration (Helena)

The following Information was available to the public on the sign-in table:

1) Foys Canyon Road Public Hearing handout (attached) included the following:
    - Where copies of the Environmental Assessment Document could be viewed
    - How to Provide Comments
    - Alternatives Advanced
    - Purpose and Need of the Project
    - Alternatives Considered But Not Advanced
    - Names & Addresses of where to send written comments
    - Summary of Impacts of the Preferred Alternative

Cross Section Figure of project
Figure map of the preferred alternative

2) Public Hearing Comment Sheet (attached)

The 12 wall displays were as follows:

1) Summary of Comments from:
- November 15, 1995 Public Workshop
  (50 people attended)
- Correspondence
  Support Improvements as proposed
  Improve road but do not widen it
  Make road safer - straighten out curves
  Dust is a problem
  Project is unnecessary - waste of money
  Oppose paving road
  Minimize impacts to: wetlands; streams; flood plains; water quality
  Improvements will increase speeds/traffic
  Signs at intersection
  Foy's Canyon Comm. Center wants land for more parking if yielded by improvements
  Keep country road atmosphere
  Minimize fish & wildlife impacts
  Minimize social/neighborhood impacts
  Minimize farmland impacts
  Accident counts are too high/too low (accidents go unreported)
  Oppose amount of land needed for right-of-way
  Seasonal problems with standing water on road
  Allow for bike path
  Maintain access to Herron Park caretaker's house
  "T" intersections at: Patrick Creek/Foy's Canyon & Foy's Lake/Foy's Canyon
  Build road to county standards not to federal standards
  Improvements will improve emergency access
  Minimize visual quality impacts - keep trees
  Identify secondary growth impacts
  Consider alternatives to avoid wetland impacts
  Traffic has increased in last 10 years
  Traffic counts are too high
  Storli farm cannot function with roadway improvements

2) Questions & Answers

Q: What initiated this re-study, why now?
A: County Commissioners voted 6/12/95 to direct MDT to proceed with the project.

Q: What happens to right-of-way if road improvements are not built?
A: MDT will review each parcel individually to determine if it should be re-sold to individuals. MDT will not sell at a loss.

Q: How much will maintenance cost?
A: Currently $8,500/yr. for regrading and additional gravel no longer needed. Costs will shift to annual restriping and pothole repair at substantially less than present cost. Major maintenance/upkeep is MDT responsibility for secondary road system.

Q: How much land is required for right-of-way?
A: 40 parcels have been purchased. 6 parcels remain to be purchased.

Q. Will there be traffic diversion as a result?
A: Only minimal shifts in traffic patterns.

Q: What are the accident statistics for secondary roads?
A: MT secondary roads = 1.66
Foy's Canyon Road - 11.09
* accidents/million vehicle miles

Q: How much money has been spent on this project?
A Approximately $500,000 as of May, 1995

Q: Why is the 1986 NEPA document not adequate?
A: It is 10 years old and insufficient by today's standards.

3) Purpose of Meeting:

Reduce existing high rate accidents
Provide a facility which is constructed to current design standards
Provide for continuity in roadway cross-sections between Foy's Lake Road and Airport Road sections
Provide for anticipated traffic growth
Reduce maintenance problems
Upgrade connection with Airport Road and Foy's Lake Road
Reduce road dust
Improve inadequate sight distance
Improve open area for recovery zone

Map of High Accident Locations

- Accident Severity Rate Fatalities + Injuries + Other
  (5.8 x 0) (2 x 19 (1 x 29) 48 = 1.40
- Accident Rate

$$\frac{\text{Accidents} \times 1{,}000{,}000}{\text{Distance} \times \text{Yrs} \times \text{AADT} \times 365\ \text{days/yr}}$$

$$\frac{48\ \text{Accidents} \times 1{,}000{,}000}{3.775\ \text{mi} \times 10\ \text{Yrs} \times 314\ \frac{\text{veh}}{\text{day}} \times 365\ \text{days/yr}} = 11.09\ \text{accidents per million vehicle miles}$$

4) Figure of 1985 - 1994 Foy's Canyon Accident Concentrations
Figure of Traffic Data

5) Existing Conditions

Aerial photo of existing visual character
Aerial photo of existing wetlands
Aerial photo of floodplains

6) Alternatives Considered But Not Advanced

Aerial photos of each modification

Modification A

Description: Northward shift near Foy's Community Center
- Objections from area landowners
- Split of 40-acre parcel

Modification B

Description: Northward shift at Hillside above Patrick Creek
- Steep grade requires substantial cut and fill
- Noise and visual impacts to Wildrose Trail residents

Modification C

Description: East shift at S-curve
- Right-of-way required for four additional properties
- Visual impacts from removal of trees and hillside cut
- Increased construction and right-of-way costs
- Three driveways would be relocated

Modification D

Description: Shifts north westerly near Shelter Valley
- Potential need to displace structure
- Severe impacts to residential properties

7) Aerial photo of secondary roadway design exception

Design Exception B

Description: Tee intersection at Patrick Creek Road with stop sign for Foy's Canyon Road

- Does not meet purpose and need
- Does not provide a consistent roadway for traveling public
- Increases potential for accidents

Design Exception A

Description: Provides horizontal curve between Foy's Lake Road and Foy's Canyon Road at 30 mph vs. 40 mph.

- Does not provide a consistent roadway for traveling public
- Increases potential for accidents
- Does not meet purpose and need of project

Non Secondary Road to 30 mph Design

Description: Existing roadway used with some changes in right-of-way, curves, and off-road features

- Reduces roadway dust and maintenance needs
- May reduce potential for accidents
- Design not compatible with Airport Road or Foy's Lake Road
- Does not meet purpose and need
- Not eligible for state or federal funding

Pave Existing Roadway Surface Only

Description: Asphalt surfaces with no changes in right-of-way, curves or off-road surfaces

- Would not meet driver expectation for design features on Foy's Lake Road and Airport Road
- Tight curves, lack of sight distance and clear zone perpetuate high accident rate
- Does not meet purpose and need

8) Preferred Alternative Description

Map of preferred alternative

Aerial photo of preferred alternative

View A & B

Visual graphic of proposed typical section

Summary of impacts of the preferred alternative (Figure 2-5 in handout attached)

Photos of preferred alternative alignment

Preferred alternative description

- Widen and pave to two 12-foot shoulders
- Add clear zone (width varies dependent on side slopes)
- Upgrade to improve stopping sight distance

- Improve intersection with Birch Creek and Patrick Creek - consistent with a 90 T-intersection with stop sign
- Reconstruct curves consistent with design speed of 40 mph

No build Alternative

Description: Retain existing roadway in its current state with no improvements and current maintenance requirements

- Traffic growth could be adequately handled without decreasing the existing level of service
- No changes would be made to lessen the impacts or to increase off-road safety features
- Roadway dust, noise and maintenance requirements would increase proportionately to increased traffic growth

9) Visual figure of floodplains of preferred alternative

10) Visual figure of existing wetlands of preferred alternative

11) Wetland Impacts

Site #1 - Existing area = .70 acres
Impacted area = .41 acre

Site #2 - Existing area = 96 acres
Impacted area = 85 acres

Site #3 - Existing area = 1.21 acres
Impacted area = .08 acre

Site #4 - Existing area - 4.3 acres
Impacted area = .71 acre

Total existing area = 6.75 acres
Total impacted area = 2.04

12) Next Step

Possible Schedule for Remaining Tasks

	1996			**1997**	**1998**
Task	**Oct**	**Nov**	**Dec**	**Jan-Dec**	
Public Hearing (10/9/96)	X				
Comments Due (10/25/96)	X				
Prepare Decision Doc	▨	▨			
Decision Document Signed			X		
Acquire Right-of-Way & Move Utilities			▨	▨	
Bidding Process				▨	
Begin Construction - 1998					▨

PUBLIC COMMENTS

Pam Eliason: I am in favor of the roadway - get it done ASAP.

Unknown: How long before construction starts? 1998

Dale Sommerfield: 627 Foy's Canyon Road. I fully support the preferred alternative of this highway and I will be looking forward to when it is completed. Thank you.

Bruce Measure: I'm an attorney for three individuals opposed to the proposed Foy's Canyon Road project and the preferred alternative for a number of reasons. The first reason is that no Notice of Availability was available to the general public. It was published once in a limited edition newspaper in the valley. From what I have seen so far, no Notice of the Availability of the Environmental Assessment was available. In attempting to obtain the Environmental Assessment, we ran into substantial problems with both the Montana Department of Transportation Kalispell Office who claimed to have no knowledge of the document or where it might be available, as well as the contracted engineers, Carter & Burgess of Denver, Colorado, in particular, Mike Worrall of Missoula Montana. In addition, no Notice of Availability of when the comment period would end for the 404 Process was available. We are still unaware, from the EA, when it began or when the comment period ends.

The Storli farm, which sits in a good portion of the proposed alternative primarily between Stations 132+90.78 and 123+41.56, requires an individual 404 Permit and an appropriate graphic disclosure for the stream confluence and wetland #3. As it's presented in the proposal there will be an apparent 8-10 foot dike with very limited drainage right in the middle of the confluence of the two major streams and also right in the center of the 100-year floodplain which the proposed alternative follows for at least ½ mile. The EA does not disclose the important stream confluence area nor does it address the floodplain itself. In all previous meetings any information available minimized the floodplain and didn't have the FEMA floodplain maps available which made it impossible for anyone to comment on the floodplain's impact on both the proposal and the adjacent landowners. The EA does not show cross-sections of the elevated roadway proposed through the core of Zone A floodplain and through the confluence area. Thus an individual 404 permit should be prepared for Wetland No. 3. There are no material volumes in the cross-sections of the same. Figure 2.5 in the EA is quite misleading. In showing the proposed typical section, it does not show a rise of approximately 6-8 feet as it passes through the area just described, but instead shows a very gradual shoulder.

Another area of particular concern is Section 2.0 and Section 2.1 - the Introduction. It is noted in the Introduction that the proposed Foy's Canyon project does not meet secondary highway standards as delineated by the Federal Highway Administration. It is misrepresented as a major collector and it does not meet that classification either. So MDT, Flathead County, and the Feds should not even be considering it for inclusion in the Secondary Highway System because it doesn't meet any of the standard necessary. The Department of Transportation is proposing to backdoor this process by bringing it into federal highway standards as a secondary roadway and then concoct some reasons it should be considered a secondary highway.

An alternative that hasn't been explored -- MDT or Carter & Burgess, the engineer, having never made any bones about the traffic accidents prior to opposition by the local populist, suddenly for the Final EA concocted the proposition that the major reason to build the proposal is because of the rate of traffic accidents in the area. If traffic accidents were the problem, why then did not either the State, the Feds, or Flathead County follow the Manual and Uniform Traffic Control Devices Act and state law 61-8-202 and 203, and provide the necessary types of signage available - slow, turn, speed limits, etc.? There is a good reason why and that is because this is a boondoggle. You are trying to spend money that you have already appropriated on something that no one wants any longer.

There is no Avoidance Alternative for the Storli wetlands. The study of the wetland approach was done in October, the driest part of one of the driest years we have ever had. No studies were done and there is no illusion to any studies being done during the Spring when they are appropriate. No measurement was taken of ordinary high water levels although the local owners would state there is often standing water in the pasture where the proposed alternative will run.

No analysis of the 100-year floodplain is contained in the EA. There is no Avoidance and Mitigation Alternative to disturbing the 100-year floodplain and planning most of the proposal in the 100-year floodplain.

In addition I object to the format of all previous public hearings as there has been no record kept of the hearing whatsoever, nor any testimony garnered other than placards that are impossible for the individual highway department employees to take cogent comments. A good example: I spoke with Mike Worrall earlier this afternoon to address the floodplain issue. He got about four words on the placard and I was about two paragraphs into my comment. That is not an effective way to comment on the planning process. It may be fun to run a bunch of bureaucrats around the room, but it is highly ineffective and doesn't qualify as a public meeting or hearing with a record produced.

Prior to proceeding further, I would suggest that the Montana Department of Transportation hold additional public hearings, review the floodplain primarily in the confluence of the two creeks at the Storli farm, review the issue of federal classifications for secondary highways, offer some actual alternatives to reducing the traffic safety problems if in fact there are any, especially according to state law and the Manual Uniform Traffic Control Device Act, and provide some avoidance alternatives for the Storli wetlands, as well as make the public hearing process meaningful by taking actual testimony rather than prohibiting commentors from commenting effectively.

Winnifred Storli: I live at 3420 Airport Road. My first comment is that I only got an assessment book after I asked for it, and there is absolutely no time to make a study of it. Next, I had no idea that the last two meetings were supposedly meetings for public comment because this just looks like a 3rd or 4th grade open house with all the pictures on the wall. There is no way of listening to what other people have to say. There were no minutes kept. No transcription of what people said. Even on this one, there is no interaction. So if you have a group and they hear each other, then there is interaction and it also means that somebody thinks of something for or against this. This, in my mind, is just a white wash.

My main concern is that I drove on this road today and yesterday and it's a winding country road and there are absolutely no road signs. Now from the time my kid was in 3rd grade and took the bus, all the people in the neighborhood have been requesting the County Commissioners and the road department for some signs. One of the main signs I needed was a stop sign by the junction of Foy's Canyon, Patrick Creek and Airport Road because there is a hill and a sharp turn and all the kids gather there by the church. There are only two signs at the end of the project - right by the Marshalls just before you get to Gardners, and on Airport Road, just after the blacktop hits the gravel road, they have a sign for a curve. On a road like that you are just asking for accidents, especially the ones we have where people slide off. Unless you know the road as well as I do, especially in the winter time, you are going to have tremendous accidents. Nobody in all these years has bothered to even address it from the County Commissioner's point of view or in this assessment. It is incredible that the cheapest and most obvious thing being asked for by everybody for years hasn't even been addressed. It is as though people have driven up the road with their blinders on. I would request that at least a stop sign be put immediately on the S curves and also have it in the proposal. Also I was wondering about negligence when this isn't done. Maybe the next time I go in the ditch, I should ask the county to pay for the damages.

This seems just absolutely universal that the departments don't follow the rules they make. There is the Manual of Uniform Traffic Control Devices which is counted as being a simple, safe and reasonable safety device, and there is not a word of it in your assessment. Also, I find it very strange that all these years, the contrary view was held - that the gravel and the winding nature of the road prevented any serious accidents. Accidents weren't the reasons for building this road until very recently. So I suppose this is because all other avenues have been exhausted. I am also outraged that I can't get any basic data on the accidents. I can easily check this out with the Highway Patrol and the ambulance runs, but the Highway Department refuses to release this information. They say it is confidential. I just want the data.

I'm not sure who is responsible, but the wetlands right by us are already being drained and the stream courses have been changed. I see this being totally ignored. Wetland #2, 3 & 4 have been drained. I'm wondering if this is part of the ... have you already started changing the road? What is happening?

On the wetlands next to the Storli farm, the stream has already been changed because the dams have been taken down, new culverts put in, the creek straightened out, and the water emptied out of the ponds. So whatever maps you have now are no longer current because this floodplain and wetland has been changed. The ducks are gone, the muskrats are gone, there are no more herons. I don't know what has happened with the fish, but I know that when there is a spring runoff it will change further because instead of having a winding stream, now you have more or less an irrigation ditch. I wonder if this has been...is this a part of the new road plan or not?

David Cik: 315 Orchard Ridge Road. I moved there about seven years ago and in that time in the little bit of stretch of Foy's Canyon Road I can see from my house, there have been four roll-overs with teenagers involved. In that time, the dust problem has been tremendous every summer and continues to be so. Every time it rains, the road gets large potholes and washboards. It doesn't seem to get graded enough as it is. Ever since I moved in I've heard promises and promises, over and over that the road would be paved and I would like to see it paved as soon as possible.

JoAnn Oftedahl: I'm wondering, after they make the cuts in banks of the road, what will they do to restore the raw open side of the road where they make those cuts? When you go along Foy's Lake Road where they met the highway, the cut has never been restored. It is just a big, ugly, bare dirt hill and it washes down onto the road whenever we have heavy rains or snowmelts in the Spring. I would like to know if they would consider restoring the beauty, planting shrubs or trees in there? Try to restore some plant growth there. If they are going to go ahead with this program, I think they should try to put plant life in those areas so it doesn't erode and look so bare.

Artik Berdimurat: I live at 425 Orchard Ridge. I am very much in favor of having the road improved - the sooner, the better. Safety is my number one concern. I feel the road in many areas is much too narrow especially during the winter months. When the road is slippery and vehicles try to pass each other they come within inches or less than a foot - it is not a safe condition.

I feel the dust is a hazard. Not only is it an annoyance for one's respiratory tract but at certain times of the day when the sun is low or in the morning when the sun is coming up, it is nearly impossible to see ahead with the combination of sunlight and dust particles in the air. I also feel the general use of the road for families living in the area is difficult because of the dust. I wouldn't want to jog or ride a bicycle along that area because I would be choking on the dust continually. The roughness of the road is another concern of mine. I feel that the roughness is just very detrimental to one's vehicles and I feel that should be taken care of - the swifter, the better.

Unknown: Regarding the sanding of the main hill, how are they going to sand the new part? They need to maintain the road in the winter. Maintenance is problem - we can't even get sand put on the road. The road is narrow in some parts and there is nowhere to go if an accident occurs. The new road is already eroding around the guardrails and it was just done. If they are not fixed before runoff occurs, you have a big problem. So how are they planning to maintain the new road?

Jane Powell: 1719 Foys Lake. I am in favor of the Foy's Canyon Road Improvement Project.

Leonard Oftedahl: 100 Foys Canyon Road. I have commented a couple of times before and am not opposed to progress, but turning this project over to the state will cost the taxpayers more and the specs demand more from the landowners who adjoin the roadway. The cut-slopes along Foy's Lake are ugly and would probably be the same on the new section of the road.

I am really in favor of the preferred alternative secondary roadway design and do think that it would save the taxpayers a lot of money. It seems that through government channels, people will always usurp more power and/or money needed than if they had to face property owners directly and ask for the money. Please consider the cost and the impact.

Roy Robinson: 602 S. Foys Lake Drive. I am concerned that this project would: a) increase traffic; and b) destroy many large trees that make this area so unique. So I propose that the road not be widened, perhaps paved. "No Build Alternative" unless it can be done without destroying that thing that makes it special. Is it possible to build a bike path instead of another lane?

Unknown: Why have so many meetings - just do it!

Unknown: Pave the existing road, no widening, sell land back to previous owners at purchase price. Improvements will increase speed.

Winnifred Storli: (written comment) EA does not show proposal's impact on Birch & Patrick Creek confluence on Storli farm. Individual 404 permit needed for Storli farm floodplain/wetland #3. EA does not show cross sections of elevated roadway proposed through the core of Zone A floodplain and through the confluence area. EA does not disclose important stream confluence area. Individual 404 permit and appropriate graphic disclosure is needed for the stream confluence and wetland #3 area.

Sharlon L. Willows:

1) Foys Canyon Road does not qualify for 86% federal funding.
2) Modernize the existing roadway to paved county standards.
3) Use signs to reduce speeds and address safety issues.
4) Reduce taking of right-of-way through wetlands, floodplains, and prime farmlands (Storli farm).
5) EA does not show impacts on Birch/Patrick Creek confluence.
6) Amount of fill for road development across core of floodplain at Storli farm is not disclosed.
7) Need site specific 404 for Storli farm.
8) Storli's own the confluence area - what is the proposal for the confluence (building the road over the confluence)? Requires full disclosure.
9) Has reduced right-of-way acquisition through floodplain core (Zone A/FEMA) been considered yet?
10) The elevated roadbed cross section through 100-year floodplain (at Storli farm) is not disclosed in EA.
11) A Sta. Pt. Map is needed with location of stream crossings in EA/404 process.
12) How does this project meet "Major Collector" Functional Classification? EA does not address.
13) Implement Section 61-8-202 & 303, MCA, now.

EA does not show proposal's impact on Birch & Patrick Creek Confluence on Storli farm. Individual 404 permit needed for Storli farm floodplain/wetland #3. EA does not show cross sections of elevated roadway proposed through the core of Zone A floodplain and through the confluence area. EA does not disclose important stream confluence area. Individual 404 permit and appropriate graphic disclosure is needed for the stream confluence and wetland #3 area.

Unknown: (written comment) EA does not show proposal's impact on Birch & Patrick Creek confluence on Storli farm. Individual 404 permit needed for Storli farm floodplain/wetland #3. EA does not show cross sections of elevated roadway proposed through the core of Zone A floodplain and through the confluence area. EA does not disclose important stream confluence area. Individual 404 permit and appropriate graphic disclosure is needed for the stream confluence and wetland #3 area.

Devar Gardner: He wants to see less trees taken on his property. He wants the project to go as soon as possible.

Paul Shelt: 265 Foys Canyon Road. Will the geometry of the culvert by wetland #1 affect drain field at property?

COMMENTS RECEIVED FROM CARDS

Wetlands

Partial destruction of wetland #1 should be revisited - it either should be relocated totally or avoided totally.

What are the calculations used to make sure the 0.5 foot maximum rise in floodplain elevation is met?

Where is the stream confluence area? Does the road go on top of it? This should be in the EA.

Wetland #4 has been drained and re-channeled. Because of this change, the EA is not accurate and must be redone to address this.

Should wetland #3 and floodplain confluence area have an individual 404 permit?

Proposal will cross wetland areas near the Storli meadows.

I am concerned about roadway impacts to floodplain. The road goes right through the middle of confluence.

Why can't road be shifted to miss wetland #1?

I want wetland #1 protected. Should preserve wetland #1 and shift road north.

Will wetlands impacts need to be mitigated? Will this delay the process?

Partial destruction of Wetland #1 should be revisited. It either should be relocated totally or avoided totally.

Wildlife

I am concerned that the wildlife and domestic animals will be killed with excessive speeds.

Traffic/Safety

Question: Did we count seasonal traffic counts?

The existing road is appropriate for the traffic on it.

Tired of seeing roll-overs on my property.

Intermittent icy spots show and bare. Pavement will be slicker than gravel when icy.
Ice will still form in the canyon. Just because the road is improved and clear zone, there still may be ice due to cliffs.

Consider using a coarser pavement surface for ice.

Have seen yet another roll-over at our fence (once per year). Our fence is dilapidating. Our horses want to escape.

Our children's school bus almost tipped over last year with our kids in it.

Bus Stop Concern. Need better signing - warning (curves) and bus stops.

I am concerned for my son's safety on the school bus that travels this road.

There should be an adequate bus pull-off where the project ends. School bus is unsafe on paved road. Paving results in higher speeds and more traffic.

Speed reduction signs approaching project (on Airport Road). There is no speed enforcement in the area.

Improvements will increase travel on Foys Canyon and Airport Road.

There was a recent roll-over accident (3 weeks ago) just outside my house - with injuries.

I was hit near the curve at Orchard Ridge about 10 years ago. I would have rolled the truck if there had not been a snow bank.

Vehicles will speed more with improvements.

Build it as it was engineered - no slip-shod job. I have seen many accidents or near misses.

People drive too fast on paved roads. Why pave Foys Canyon Road?

There are safety problems for pedestrians and bikes because of poor visibility and no shoulder.

Gravel roads are unsafe for bikes.

Safety concerns - reduce speed.

The improvements will increase speed which will increase accident severity. A speed limit is needed.

Would like to see accidents reduced. Most accidents go unreported.
I almost got hit by a logging truck recently.

I have personally seen two accidents at the church and one at Garner's curve.

I want to see the project go now! I am concerned about safety. I am concerned about kids rolling cars.

The project is worth doing just for accident reductions.

Should implement section 61-8-202 and 203, MCA, on this section now. Mitigation measures should be implemented if there is a concern for safety, i.e., signage, etc.

I want the preferred alternative built. I had a near accident this past weekend.

The road is hard on our vehicles. We fear for our daughter's safety, she drives it every day.

Will law enforcement be increased? It would be nice to have increased law enforcement regarding speeds.

The improved road may increase traffic because it would be a scenic loop route.

I have pulled a lot of people out of the ditch.

Improve the road for safety, dust, mud and no more tar.

I fear that the proposed improvements will cause higher speeds. Airport Road experiences high speeds already.

Cars go east from Airport Road way to fast. I think paving the road will encourage increased speeds and increased traffic.

The preferred alternatives has a lot of pluses but we are concerned about speed.

I am concerned about kids riding bikes on this road. On the last curve the cars go 45-50 mph. I am concerned about controlling speeds.

Dust

Does the Clean Air Act apply to this project because of the amount of dust in a small area?

Dust is a problem.

I want the preferred alternative built. The dust is horrible.
I want to see the project go now! I am tired of eating dust.

Dust is a real problem.

Why should anyone live on a hazardous and dusty road?

I live on Orchard Ridge. I'm in favor of improved road because of dust, roughness, safety (s-curves are bad), access of public, wear and tear on vehicles.

Our brand new house gets a soot layer on it. The dust hangs in the air at night continuously. Smells like dry wall because of dust.

Family members have allergies and dust makes it worse.

Dust is a concern.

There is dust for bikes and pedestrians on gravel surfaces.

Dust is a problem.

Design:

Straighten road but do not pave.

How will access be provided to Foys Community Center and the caretakers facility?

What's to become of the corner left on Herron property that is cut off with first corner?

Why not widen and improve the road but not pave it - secondary standards have not been met, dust, maintenance.

Why can't the road be straightened and kept gravel? Would maintenance be less with gravel or asphalt?

Why is there a sharp curve at project beginning?

I am in favor of the preferred alternative as originally designed. Just build it!

Keep the shoulder for horse usage.

I just wanted the road improved a little - curves straightened and a little paving. Did not want a super highway.

Build it as it was engineered - no slip-shod job. I have seen many accidents or near misses.

Concerned about intersection of Airport Road and Shelter Valley Road - too sharp, needs to be straightened out.

Prefer alignment that uses public school land, not near my house (noise and drain field concern).

Bike Path

Need walking/biking area - wider shoulders (3 feet or more).

Design the road with bike path, walkway, or hikeway. However, I haven't noticed hikers or pedestrians.

You should have included a separate bike lane or path.

I would like to see a bike lane or equestrian lane considered in the project facilities. There are a lot of walkers (dogs. etc.).

Aesthetics

Orchard Ridge resident wants the road moved east away from trees.

Cut slopes (like Foys Lake Road) are a visual impact. Aesthetics are important. Avoid large cut slopes, purchase additional right-of-way if necessary.

Old growth trees will be cut with wider road. Pave existing road as it.

Maintenance

Regarding maintenance in the winter. Are cost savings account for?

Overall maintenance must be very high. The improvements will decrease costs.

Maintenance by the county in the summer is not bi-weekly.

Maintenance costs will continue to grow without improvement.

The maintenance statement that gravel is put on every two weeks is wrong.

Does the county really pay for maintenance now?

Schedule

How long before construction? 1998

Will a decision be made soon? Hopefully the road will go ahead or let us have our property back at the same price as the purchase price.

Why hasn't it been paved already? No federal funds - not purpose and need.

It is awful that construction is delayed to 1998.

I want to see the project go now! I am tired of eating dust.

General

In Purpose and Need - should acknowledge court case DV95-066A - the CEX was determined not sufficient.

Need a cross-section for the road through the farm that shows the fill area.

Land in the vicinity of the first curve is owned by School District #5. This is not acknowledged in the EA.

There appears to be several errors in the EA that I know about. How many are there that I don't know about?

I feel I should have been sent an EA since I submitted a substantive comment.

I am concerned because I sent a written request for copy of the EA and did not receive one. Then I had to call and request one. I did receive one on October 4,1996.

Just get it done!

Make the improvement - the sooner the better.

We have a nice car that is getting slowly trashed, paint chips, creaks, alignment.

Cars are taking a beating on existing road - washboarded. It needs to be paved.

I won't buy a new car until the road is paved. Cars as so dirty now.

Recent news articles said that Foys Canyon Road has no more traffic than Camas Creek Road in the winter.
Interlake Article within the last few weeks stated that "the project has been stopped." I believe it was an AP article regarding statewide funding.

Why not use Alternative B?

I would prefer the no-build or the alternative to just pave the existing road.

I want to see road improvements made as proposed.

I want the road paved. It is a good idea. Need to control speeds.

Preferred alternative is most workable plan.

I am surprised at the length of utility relocates.

I want to see the proposed alternative built for the following reasons: dust, safety, wear and tear on vehicles, don't want to see county loose $500,000 in right-of-way purchases.

I think the improvements are needed.

It doesn't look like the Storlis are farming. They own a hotel in town.

Why can't Storli farm operate with preferred alternative?

Why can't Storlis be avoided?

Like the format of the meeting. There is a better opportunity for all people to speak. I am too shy to speak in large groups.

I am concerned that the format of this meeting is not a proper public hearing per regulations.

I don't think that an open house is a proper format for a public hearing.

I live behind the church and I support the project.

Will the name of the road change? Airport Road currently extends to Patrick Creek Road, then becomes Foys Canyon Road.

Can't get legal access to our property until utilities are moved and PTI won't move it until road is paved (or we have to pay $10,000).

Why is this a priority? Why is this a secondary road system?

foyshear.min

(10)

Foy's Canyon Road

Public Hearing
October 9, 1996

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Public Hearing
October 9, 1996

Foy's Canyon Road

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Foy's Canyon Road

Public Hearing
October 9, 1996

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(11)

Foy's Canyon Road

Public Hearing
October 9, 1996

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City, State, Zip Phone

Foy's Canyon Road

Public Hearing
October 9, 1996

(19)

SIGN-IN

◆

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◆

Brenda L. Williams
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E JOSEPH LIECHTY
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Paul & Cindy Kruse
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◆

David Vicky Gardner
Name (please print)
P.O. Box 943 - 3095 Airport Rd
Mailing Address
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Name (please print)
Mailing Address
City, State, Zip Phone

◆

Name (please print)
Mailing Address
City, State, Zip Phone

Foy's Canyon Road

PUBLIC HEARING
COMMENT SHEET

This comment sheet must be postmarked no later than October ~~18~~ 25, 1996.

I have the following comments or questions about the Foys Canyon Road Improvement project:

Name:

Address:

Phone:

(above information is optional)

Fold here

Return Address:

____

____

____

Place
stamp
here

Joel M. Marshik, P.E.
Manager - Environmental Services
Montana Department of Transportation
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

Fold here

Foy's Canyon Road

Public Hearing

This is an open house format. No formal presentation will be made.

October 9, 1996
5:30-7:30 PM
At *Cavanaugh's - Lake McDonald Meeting Room*
20 North Main Street, Kalispell, Montana

The Environmental Assessment (EA) for improvements to Foys Canyon Road has been completed. Copies of the EA document are available for your review and comment at the hearing tonight and at the following locations:

- Flathead County Public Library
  247 1st Avenue East
- Flathead County Commissioners
  800 South Main

How to Provide Comments

A transcriber is present to record all comments for the transcript of this hearing. You may provide comments in the following ways:

- Speak to a project team member (people with name tags). They will write down your comments and give them to the transcriber.
- Speak directly to the transcriber.
- Write down your comments and give them to the transcriber.
- Write down your comments and mail them to the address listed on the back.

All comments must be post-marked no later than October 18, 1996.

25

Alternatives Advanced

The **Preferred Alternative** that has been preliminarily identified is the **Secondary Roadway Design**, as described below:

- Widen and pave to two 12-foot lanes with two-foot shoulders.
- Add clear zone (width varies depending on side slope).
- Upgrade to improve stopping sight distance.
- Improve intersections with Birch Creek and Patrick Creek consistent with a 90 degree Tee intersection with a stop sign.
- Reconstruct curves consistent with a design speed of 40 mph.

No-Build Alternative

Description: Retain the existing roadway in its current state with no improvements and current maintenance requirements. Traffic growth could be adequately handled without decreasing the existing level of service (LOS). No changes would be made to lessen the accidents or to increase off-road safety features. Roadway dust, noise, and maintenance requirements would increase proportionally to increased traffic growth.

Purpose and Need of this Project

The purpose of this project is to upgrade Foys Canyon Road to Montana secondary roadway standards and to provide safer traffic operations along the County roadway system. These improvements will:

- Reduce existing high rate of accidents.
- Provide a facility which is constructed to current design standards.
- Provide for consistent roadway cross-sections, secondary roadway design between the Foys Lake and Airport Road.
- Provide for anticipated traffic growth.
- Reduce maintenance problems.

Alternatives Considered But Not Advanced

Several other alternatives were considered but were not advanced. Following are descriptions of these alternatives and reasons why they were not advanced.

Non Secondary Roadway Design with 30 mph Design Speed

Description: Existing roadway used with some changes in right-of-way, curves and off-road features.

- Reduces roadway dust and maintenance needs.
- Design not compatible with Airport Road or Foys Lake Road.
- Not eligible for state or federal funding.
- Does not meet purpose and need.

Pave Existing Surface Only

Description: Asphalt surface with no changes in right-of-way, curves, or off-road features.

- Would not meet drivers' expectations for design features on Foys Lake and Airport Roads.
- Tight curves, lack of sight distance and clear zone perpetuates high accident rate.
- Does not meet purpose and need.
- Not eligible for state or federal funding.

Secondary Roadway with Design Exception A

Description: Provides horizontal curve between Foys Lake Road and Foys Canyon Road at 30 mph versus 40 mph (design speed).

- Does not provide consistent roadway for traveling public.
- Increases potential for accidents.
- Does not meet purpose and need of the project.

Secondary Roadway with Design Exception B

Description: Tee intersection at Patrick Creek Road with stop sign for Foys Canyon Road.

- Does not provide a consistent roadway for the traveling public.
- Increases potential for accidents.
- Does not meet purpose and need.

Secondary Roadway Design Modification A

Description: Northward shift near Foys Community Center.

- Objection from landowners.
- Impacts to prime farmlands.
- Splits a 40 acre parcel.

Secondary Roadway Design Modification B

Description: Northward shift at hillside above Patrick Creek.

- Steep grade requires substantial cut and fill.
- Noise and visual impacts to Wild Rose Trail.

Secondary Roadway Design Modification C

Description: East shift at S-Curves.

- Right-of-way required from four additional properties.
- Visual impacts from removal of trees and hillside cut.
- Increased construction and right-of-way costs.
- Three driveways would be relocated.

Secondary Roadway Design Modification D

Description: Shifts northwesterly near Shelter Valley Drive.

- Severe impacts to residential properties.
- Potential need to displace a structure.

Your Comments Are Encouraged

You can give us your comments at this Public Hearing or send written comments to:

Joel M. Marshik, P.E.
Manager - Environmental Services
Montana Department of Transportation
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

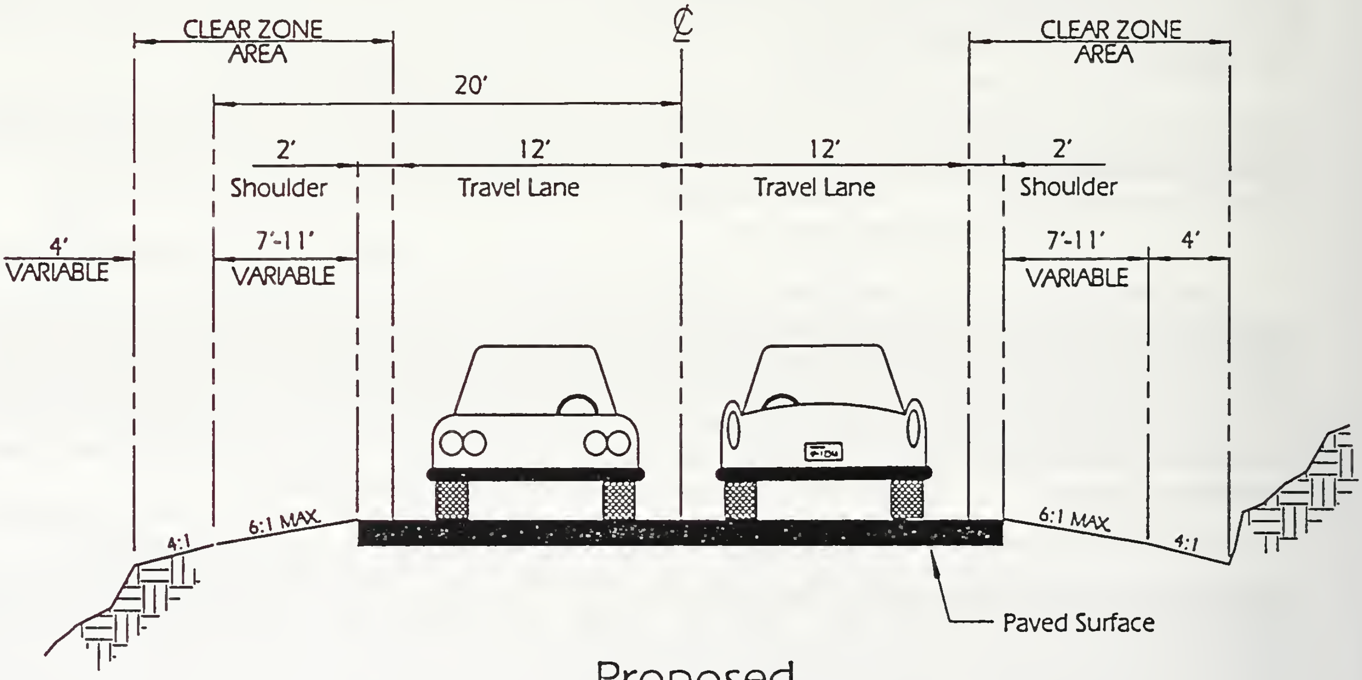
or

Dale Paulson
Environmental Coordinator
Federal Highway Administration
301 South Park, Room 448
Drawer 10056
Helena, Montana 59626-0056

*** Comments must be post-marked by October 18, 1996 ***

Summary
Impacts of the Preferred Alternative

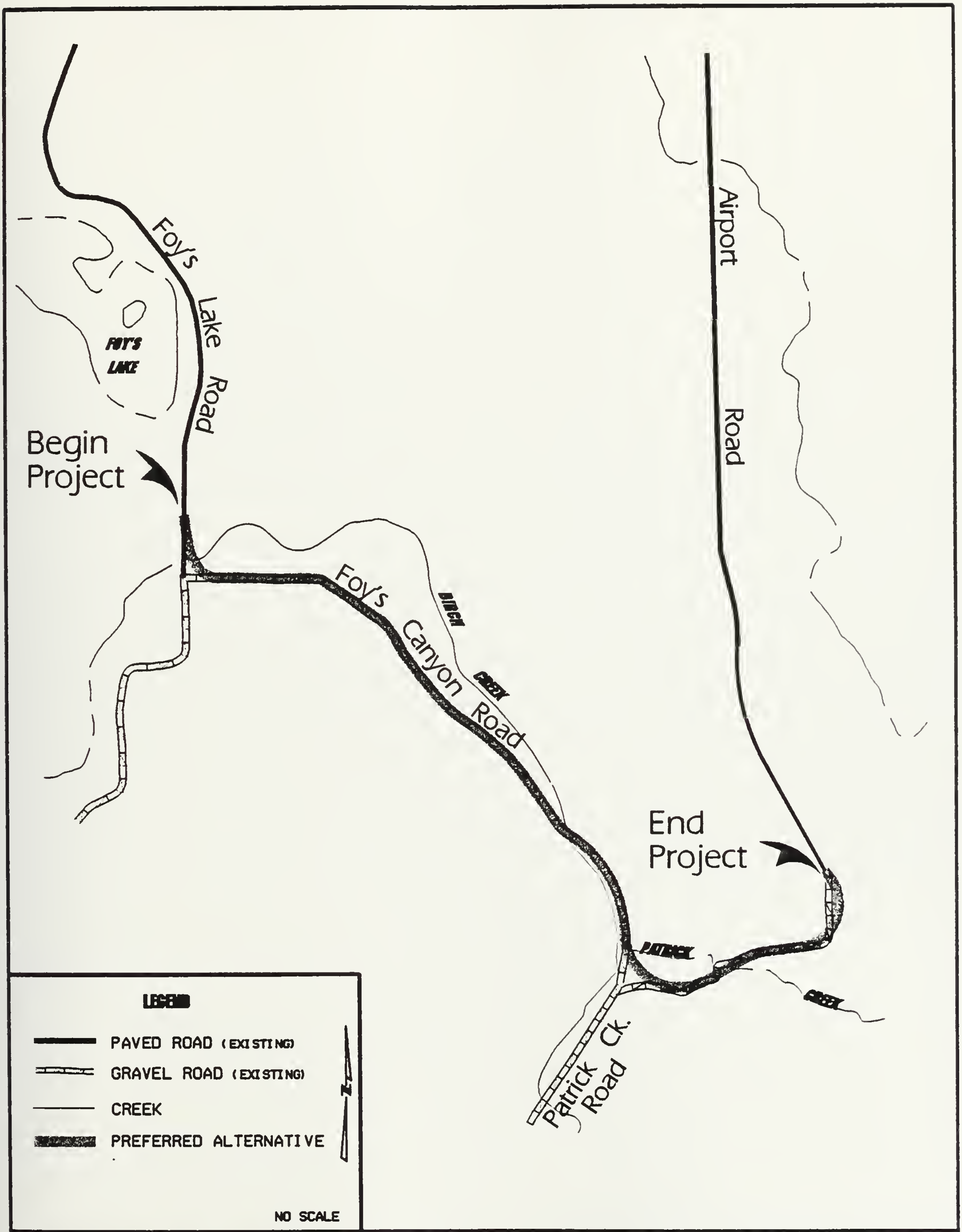
Land Use	• Will accelerate short-term residential development.
Socioeconomic	• Will change character from rural to more suburban. • Will improve access for Forest Service and logging companies. • Will improve response time of fire and police providers. • Will not affect, separate or isolate any distinct neighborhoods, low-income groups, or minority households or businesses.
Pedestrians and Bicyclists	• Travel conditions for pedestrians and bicyclists will be substantially enhanced.
Right-of-Way	• 49 separate parcels will be required for right-of-way (MDT has already purchased 37 of these). • One barn will be taken.
Parks and Recreation	• Access to Flathead National Forest will be somewhat improved. • Users trailering boats may be more inclined to use Foys Lake via the Preferred Alternative.
Air Quality	• Short-term air quality emissions will occur during construction. • Paving the existing gravel road will improve localized air quality.
Noise	• No receptors are projected to receive substantial increases in traffic noise levels over the next 20 years.
Water Resources/Quality	• There will be a temporary increase in sedimentation from construction-related activities. • There will be increases in runoff volume and increases in runoff contaminants flowing into adjacent surface waterways.
Wetlands	• Short-term impacts will occur to wetlands during construction. • Long-term impacts will occur due to the placement of 2.04 acres of dredged or fill material in the wetlands, and long-term indirect effects due to receipt of runoff from the paved roadway.
Wildlife, Threatened and Endangered Species	• The Preferred Alternative is not likely to adversely affect the endangered peregrine falcon, the threatened bald eagle, or their associated habitats. • Long-term displacement of songbirds and small mammals can be expected, as well as minor reductions in small, localized populations of amphibians and reptiles.
Floodplains	• The Preferred Alternative will occupy approximately 1.58 acres of the existing 100-year floodplain for Patrick and Birch Creeks, due to increased road width. • Reduced risk of flooding of the road by raising Foys Canyon out of the 100-year floodplain will be a beneficial impact of the project. • Support for development in the base floodplains will neither increase nor decrease.
Cultural Resources	• No impacts to known cultural resources will occur.
Hazardous Materials	• No known hazardous materials sites should be impacted. • Improved overall safety conditions will minimize potential for spills of hazardous materials.
Visual	• Short-term construction-related impacts will occur. • Road width will be expanded. • A paved surface will be introduced. • Cut and fill sections will have a visual impact. • Right-of-way will be expanded, including the clear zone. • Removal of mature trees and other vegetation in some areas will occur. • Change of visual character along new alignment segments will occur.
Farmland	• No direct impact will occur to farmlands.
Safety	• Accident probability will be decreased.
Construction	• Temporary noise and vibration, fugitive dust, erosion and sedimentation, water quality, visual, and access impacts will occur.



Proposed
Cross Section

FOY'S CANYON ROAD

PROPOSED TYPICAL SECTION
Figure 2-5



FOY'S CANYON ROAD

PREFERRED ALTERNATIVE

Figure 1-4

Appendix C

Appendix C

Comment Letters Received

and

Responses to Comment Letters

Response to Written Comments Received by Mail Prior to October 25, 1996

The following pages contain written comments received followed by response to those comments. Twenty-four written comments were received.

A. Letter dated February 12, 1996, from Sharlon L. Willows

1. No significant encroachment on the floodplain will occur; therefore, no avoidance alternatives are required. The is discussed on pages 4-39 to 4-40 of the EA.
2. Avoidance alternatives for wetlands is contained in Section 4.10.4 Practicable Alternatives, pages 4-28 through 4-30 of the EA.
3. Alternatives considered but not advanced are included in Section 3.2 of the EA. Modification B was considered, and would have avoided the Storli property, it was not advanced for reasons described in Section 3.2.1.2 of the EA.
    a. Section 4.10 of the EA identifies fill materials in wetlands, provides analysis of impacts, discusses practicable alternatives, discusses project modifications to avoid and minimize discharges and provides a mitigation plan.
    b. Floodplains are analyzed in Section 4.12 of the EA.
    c. Wetland locations are shown on Figure 4-7 of the EA, floodplain locations are shown on Figure 4-8 of the EA.
    d. Section 4.9 Water Resources/Quality identifies the preparation of a stormwater pollution prevention plan. The Montana Department of Environmental Quality, Water Quality Division, requires for all projects that the contractor obtain a Montana Pollutant Discharge Elimination System (MPDES) permit to discharge stormwater associated with construction activity.
    e. See response to b. above.

The draft EA, the draft 404 Application AND the public open house info. Failed to Respond to ALL substantive comments below.

← 10/17/96 Note to Robert McInerney

Joel Marshik

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OCT 21 1996
ENVIRONMENTAL

Sharlon L. Willows, C.L.A.
Certified Legal Assistant Administrative Law
Transportation, Natural & Cultural Resource Law
POB 422
Hungry Horse, MT 59919-0422

Attn: # 199690354

✓ Resent 10/17/96 to COE and MDT/Marshik
✓ Attn: NEPA TRANSCRIPT

February 12, 1996

Technical Memorandum

To: Leanette Lostracco, Carter & Burgess
Gordon Stockstad, MT Department of Transportation
Jeff Ryan, Dept. of Environmental Quality
Dale Paulson, FHWA Environmental Planning
Robert McInerney, Corps of Engineers (COE)
✓ Bruce Measure, Attorney

Re: Comment on Insufficient EA/Section 404(b)(1) Alternatives Processes
Foys Canyon Road RS 503-1(4)4 C#0733

* not available for review — request for public access pending

1. DOT/FHWA regulations @ 23 CFR 650.101 - 650.117 regarding significant encroachment into the base floodplain apply to this Federally funded planning project (CFR attached) throughout the Storli farm.

This project involves a significant encroachment into the base flood plain as defined at 23 CFR 650.105(q)(3). A Location hydraulic study is required as detailed @ 23 CFR 650.111(c). An "Only practicable alternative" finding is required that must be supported in the final environmental document, see 23 CFR 650.113. *Alternatives must be considered within the base flood plain where the highway will cross the drainage (Storli's farm).*

A significant encroachment to fill the core of this base floodplain with highway development that will tend to raise the BFE (base flood elevation) levels. How much fill material is proposed within BFE?

Along and through the Storli farm, this proposal calls for relocating the roadway from the edge of the base floodplain into the center of the BFE. This area within BFE is sensitive aquatic environment where two creeks merge presupposing significant groundwater recharge function. Required Practicable *location and design* alternatives have not yet been considered for the base floodplain hazard area.

The existing roadway along the south end of the Storli farm is located outside the base floodplain. This proposal considers only one alternative - relocation of the roadway into the center of the base flood plain, overtop creeks and groundwater recharge areas in the center of this riparian zone ! Modifications to the design are necessary in the core of the base floodplain. Alternative C is an avoidance alternative for wetlands to the east of Storli farm and does not qualify as a practicable alternative for proposed base floodplain encroachment. No alternatives have been considered yet to avoid and minimize significant proposed encroachments into *base floodplain primarily located on the Storli farm.*

All EA graphics for roadway proposals through the Storli farm should overlay the base floodplain terrain &/or the BFE, including disclosure of exact proposed crossings of Patrick & Birch Creeks. These graphics should be drawn to scale. This will allow for better understanding of major water quality, base floodplain, and watershed impacts primarily focused in the Storli farm area._

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with 404
data not
available
@Public
open
house

2. Combine Section 404 and NEPA processes - draft EA should include draft Section (b)(1) Evaluation for 404 permit.

Effective May 1992, it is "the official policy of FHWA, the Corps, and EPA to fully implement the intent of the "Red Book" (attached Exhibit 17E). Chapter 11 of the Red Book (11-9) demonstrates, in order to achieve concurrent provision for public participation, the Alternative analysis required by (Clean Water Act) should be incorporated into the environmental document.

Red Book also recommends completing the Section 404(b)(1) compliance determination concurrent with ROD under NEPA (Record of Decision). Therefore, the public should have access to the draft Section 404(b)(1) Evaluation, & the draft 404 permit Application *per se* during the minimum 30 day comment period on this draft EA.

This project is 86% Federally funded. Therefore, the Federal agencies , MDT and their consultants have explicit policy direction regarding duty to comply when using Federal funds. This compliance

must proceed in a timely matter during draft planning stage. When will compliance commence on this project ?

Factual Determinations are necessary - see 40 CFR 230.11. Explicitly, 40 CFR 230.11(a) - Physical Substrate determination regarding nature and degree of effect on characteristics of the substrate at the proposed disposal site. The size, shape, and degree of compaction of discharge materials must be determined - see requirements for discharge (230.10). This determination shall consider loss of environmental values and actions to minimize impact, see 40 CFR 230.20, Subpart H. Aquatic ecosystem determination is required @ 40 CFR 230.11(e). At this point, Streambank Protection measures, M.C.A. 87-5-501-509 should be integrated.

3. Mitigation Planning Needed - Proper NEPA process is not being applied to Storli Farm

* Major proposal for elevated cross section across Storli Farm/base flood not disclosed in EA or 404 Application

The overall intent of early planning in NEPA is to "Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves *unresolved conflicts* ... 40 CFR 1501.2(c).

The proposed "Taking" of the Storli farm remains a primary controversy with court history. As such, Newsletter #2 identifies "Minimize impacts to property owners" as a significant issue for this Environmental Assessment process. However, nothing whatsoever has been done to describe appropriate alternatives that will minimize impacts to the Storli farm !

As verified by Consultant @ the recent meeting, no alternatives to minimize impact to the Storli farm have been considered. Newsletter #2 did not specify that Alt. C was wetland avoidance (primarily to the east of Storli). Many public and agency participants may wrongly assume Alt. C was intended to reduce impacts to the Storli farm, when in fact, no such necessary action has yet been considered. The EA should specifically discuss impact minimization for the Storli farm. Continued obfuscation in NEPA process is inappropriate.

A major purpose of NEPA is "Identifying at an early stage the significant environmental issues *deserving of study* ...", 40 CFR 1501.1(d). This EA process has identified "Minimize impacts to property owners" as a significant issue ; therefore, when will appropriate mitigation planning commence for the Storli farm ?

Reduced right-of-way acquisition through prime farmland/base floodplain should be utilized as a mitigation tool and for design modification. Minimal right-of-way acquisition

(&proposed clearing) through base floodplain/creek riparian area should be utilized as mitigation in design.

4. EA should fully address 404(b)(1) Evaluation requirements:

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* Identification of size, type of discharge, estimated quantity of fill to be placed in *each aquatic location to be affected* for the PA (Preferred Alternative). All encroachments should be analyzed to determine their specific impacts. The least damaging "practicable alternative" should be identified for each significant encroachment proposed.

* Provide specific discussion of project modifications to *avoid and minimize* discharges to streams and aquatic sites, with a detailed mitigation plan to provide compensation for unavoidable wetland impacts.

* Adequate discussion and evaluation of individual 404 fills for findings of compliance @ 40 CFR 230.11, Subpart B, Factual Determinations: evaluation of individual creek culverts, their fill encroachments, discussions of their flood flow capacity, sediment and bedload transport, fish and wildlife passage, etc.

* Show stream/base floodplain/wetland locations in relationship to proposed project alignments *on all graphics* thereby allowing for understanding of major water quality, watershed and groundwater recharge impacts involved in *this controversial riparian location (Storli farm).*

*Stormwater runoff permit and pollution prevention plan requirements should be prominently identified and described in the draft EA.

* Analysis of "ecologically critical areas" (such as base floodplains, flood hazard zones, concentrated riparian habitats) is requirement of NEPA. 40 CFR 1508.27(b)(3)(5).

Thank you very much for your immediate attention to the above important compliance matters central to this planning process. Respectfully submitted,

Sharlon L. Willows C.L.A., Certified Paralegal
Administrative Law, 59919-0422.

CC: Storli
Encl. 3

Attachment to Sharlon Willows Letter

total expected cost to the public. It shall include probable flood-related costs during the service life of the facility for highway operation, maintenance, and repair, for highway-aggravated flood damage to other property, and for additional or interrupted highway travel.

(q) *Significant encroachment* shall mean a highway encroachment and any direct support of likely base flood-plain development that would involve one or more of the following construction-or flood-related impacts:

(1) A significant potential for interruption or termination of a transportation facility which is needed for emergency vehicles or provides a community's only evacuation route.

(2) A significant risk, or

(3) A significant adverse impact on natural and beneficial flood-plain values.

(r) *Support base flood-plain development* shall mean to encourage, allow, serve, or otherwise facilitate additional base flood-plain development. Direct support results from an encroachment, while indirect support results from an action out of the base flood plain.

§ 650.107 Applicability.

(a) The provisions of this regulation shall apply to all encroachments and to all actions which affect base flood plains, except for repairs made with emergency funds (23 CFR part 668) during or immediately following a disaster.

(b) The provisions of this regulation shall not apply to or alter approvals or authorizations which were given by FHWA pursuant to regulations or directives in effect before the effective date of this regulation.

§ 650.109 Public involvement.

Procedures which have been established to meet the public involvement requirements of 23 CFR part 771 shall be used to provide opportunity for early public review and comment on alternatives which contain encroachments.

[53 FR 11065, Apr. 5, 1988]

§ 650.111 Location hydraulic studies.

(a) National Flood Insurance Program (NFIP) maps or information developed by the highway agency, if NFIP maps are not available, shall be used to determine whether a highway location alternative will include an encroachment.

(b) Location studies shall include evaluation and discussion of the practicability of alternatives to any longitudinal encroachments.

(c) Location studies shall include discussion of the following items, commensurate with the significance of the risk or environmental impact, for all alternatives containing encroachments and for those actions which would support base flood-plain development:

(1) The risks associated with implementation of the action,

(2) The impacts on natural and beneficial flood-plain values,

(3) The support of probable incompatible flood-plain development,

(4) The measures to minimize flood-plain impacts associated with the action, and

(5) The measures to restore and preserve the natural and beneficial flood-plain values impacted by the action.

(d) Location studies shall include evaluation and discussion of the practicability of alternatives to any significant encroachments or any support of incompatible flood-plain development.

(e) The studies required by § 650.111 (c) and (d) shall be summarized in environmental review documents prepared pursuant to 23 CFR part 771.

(f) Local, State, and Federal water resources and flood-plain management agencies should be consulted to determine if the proposed highway action is consistent with existing watershed and flood-plain management programs and to obtain current information on development and proposed actions in the affected watersheds.

§ 650.113 Only practicable alternative finding.

(a) A proposed action which includes a significant encroachment shall not be approved unless the FHWA finds that the proposed significant encroachment is the only practicable alternative. This finding shall be included in the final environmental document (final

environmental impact statement or finding of no significant impact) and shall be supported by the following information:

(1) The reasons why the proposed action must be located in the flood plain,

(2) The alternatives considered and why they were not practicable, and

(3) A statement indicating whether the action conforms to applicable State or local flood-plain protection standards.

[44 FR 67580, Nov. 26, 1979, as amended at 48 FR 29274, June 24, 1983]

§ 650.115 Design standards.

(a) The design selected for an encroachment shall be supported by analyses of design alternatives with consideration given to capital costs and risks, and to other economic, engineering, social and environmental concerns.

(1) Consideration of capital costs and risks shall include, as appropriate, a risk analysis or assessment which includes:

(i) The overtopping flood or the base flood, whichever is greater, or

(ii) The greatest flood which must flow through the highway drainage structure(s), where overtopping is not practicable. The greatest flood used in the analysis is subject to state-of-the-art capability to estimate the exceedance probability.

(2) The design flood for encroachments by through lanes of Interstate highways shall not be less than the flood with a 2-percent chance of being exceeded in any given year. No minimum design flood is specified for Interstate highway ramps and frontage roads or for other highways.

(3) Freeboard shall be provided, where practicable, to protect bridge structures from debris- and scour-related failure.

(4) The effect of existing flood control channels, levees, and reservoirs shall be considered in estimating the peak discharge and stage for all floods considered in the design.

(5) The design of encroachments shall be consistent with standards established by the FEMA, State, and local governmental agencies for the administration of the National Flood Insurance Program for:

(i) All direct Federal highway actions, unless the standards are demonstrably inappropriate, and

(ii) Federal-aid highway actions where a regulatory floodway has been designated or where studies are underway to establish a regulatory floodway.

(b) Rest area buildings and related water supply and waste treatment facilities shall be located outside the base flood plain, where practicable. Rest area buildings which are located on the base flood plain shall be floodproofed against damage from the base flood.

(c) Where highway fills are to be used as dams to permanently impound water more than 50 acre-feet (6.17×10^4 cubic metres) in volume or 25 feet (7.6 metres) deep, the hydrologic, hydraulic, and structural design of the fill and appurtenant spillways shall have the approval of the State or Federal agency responsible for the safety of dams or like structures within the State, prior to authorization by the Division Administrator to advertise for bids for construction.

§ 650.117 Content of design studies.

(a) The detail of studies shall be commensurate with the risk associated with the encroachment and with other economic, engineering, social or environmental concerns.

(b) Studies by highway agencies shall contain:

(1) The hydrologic and hydraulic data and design computations,

(2) The analysis required by § 650.115(a), and

(3) For proposed direct Federal highway actions, the reasons, when applicable, why FEMA criteria (44 CFR 60.3, formerly 24 CFR 1910.3) are demonstrably inappropriate.

(c) For encroachment locations, project plans shall show:

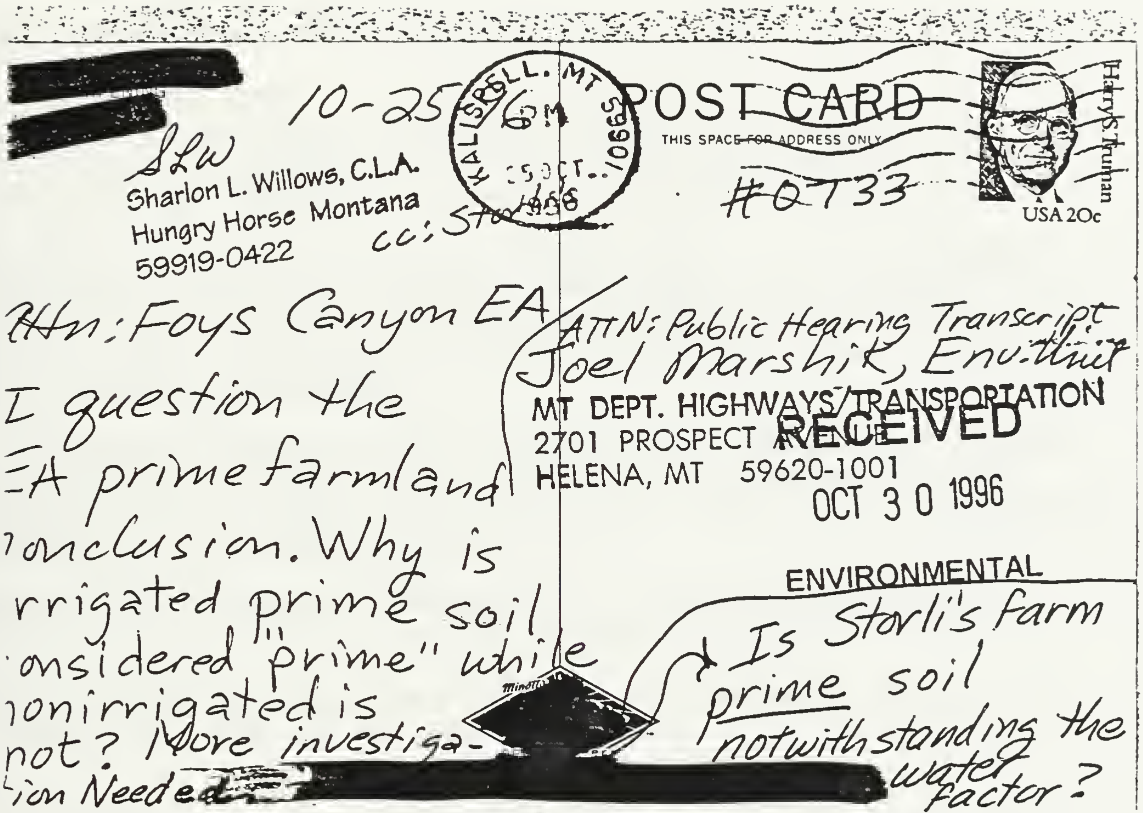
(1) The magnitude, approximate probability of exceedance and, at appropriate locations, the water surface elevations associated with the overtopping flood or the flood of § 650.115(a)(1)(ii), and

(2) The magnitude and water surface elevation of the base flood, if larger than the overtopping flood.

B. Postcard dated October 25, 1996, from Sharlon L. Willows

The Natural Resource Conservation Service (NRCS) staff conducted a soil examination at the proposed right-of-way for this project located at the Storli property on April 25, 1997. The NRCS concluded that the soils meet the criteria for prime farmland. (See attached letter dated April 29, 1997 from the NRCS). Therefore, a Farmland Conversion Impact Rating form was completed with the assistance of the Kalispell NRCS.

Several alternatives were considered that would have avoided impacts to prime farmlands, these are described in Section 3.2 of the EA and include 3.2.1.2 Modification B, 3.2.2 Pave Existing Surface Only and 3.2.3 Non-Secondary Road to 48 kph (30 mph) Design. The reasons that these alternatives were not advanced are also contained in Section 3.2 of the EA.



[redacted]

10-25-96

SLW
Sharlon L. Willows, C.L.A.
Hungry Horse Montana
59919-0422
cc: Sto

KALISPELL, MT 59901
PM
25 OCT
1996

POST CARD
THIS SPACE FOR ADDRESS ONLY

Harry S. Truman
USA 20c

#0733

Attn: Foys Canyon EA

I question the EA prime farmland conclusion. Why is rrigated prime soil considered "prime" while nonirrigated is not? More investigation Needed [redacted]

ATTN: Public Hearing Transcript:
Joel Marshik, Env. Unit
MT DEPT. HIGHWAYS/TRANSPORTATION
2701 PROSPECT AVENUE
HELENA, MT 59620-1001

RECEIVED
OCT 30 1996
ENVIRONMENTAL

Is Storli's farm prime soil notwithstanding the water factor?

USDA

United States
Department of
Agriculture

Natural
Resources
Conservation
Service

Soil Survey Office
30 Lower Valley Rd.
Kalispell. MT 59901

Jeannette Lostracco
Carter & Burgess
216 16th Street Mall
Denver, CO 80202

Date: April 29, 1997

Dear Jeannette:

On April 25, 1997, I visited the right-of-way of the proposed Foys Canyon reconstruction at the property of Per and Winnifred Storli. I had been requested by all parties concerned to resolve the question of prime farmland.

I examined 3 profiles on each component of the landscape, with the exception of those areas immediately adjacent to the stream, forested, and obviously too wet to be considered prime. These areas were already considered hydric in the environmental assessment.

I classified these soils as fine-silty, carbonatic, frigid, Oxyaquic Udifluvents. This will be a new series in this survey area and should be relatively common in the drainways along the west side of the valley.

These soils meet all the criteria found in the National Soils Handbook (attached) for prime farmland.

If you have any questions or need any further information, please feel free to call 406-752-4731.

Sincerely,

Snell

Gregory L. Snell
Soil Scientist Specialist

Attachments: NSH Prime Farmland Criteria

cc:
Janice Brown and Jerry Cloud, Fed. Hwy. Adm.
Gordon Stockstad, Montana Department of Transportation
Bruce Measure, Attorney
Per and Winnifred Storli

AN EQUAL OPPORTUNITY EMPLOYER

MT

(i) The soils have:

(a) Aquic, udic, ustic, or xeric moisture regimes and a sufficient available water capacity within a depth of 40 inches (1 meter), or in the root zone (the root zone is the part of the soil that is penetrated or can be penetrated by plant roots) if the root zone is less than 40 inches deep, to produce the commonly grown cultivated crops (cultivated crops include, but are not limited to, grain, forage, fiber, oilseed, sugar beet, sugarcane, vegetable, tobacco, orchard, vineyard, and bush fruit crops) adapted to the region in 7 or more years out of 10; or

(b) Xeric or ustic moisture regimes in which the available water capacity is limited, but the area has a developed irrigation water supply that is dependable (a dependable water supply is one in which enough water is available for irrigation in 8 out of 10 years for the crops commonly grown) and of adequate quality; or,

(c) Aridic or torric moisture regimes, and the area has a developed irrigation water supply that is dependable and of adequate quality.

(ii) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These soils have, at a depth of 20 inches (50 cm), a mean annual temperature higher than 32° F (0° C). In addition, the mean summer temperature at this depth in soils with an O horizon is higher than 47° F (8° C); it is higher than 59° F (15° C) in soils that have no O horizon.

(iii) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches (1 meter) or in the root zone if the root zone is less than 40 inches deep.

(iv) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow cultivated crops common to the area to be grown.

(v) The soils can be managed so that, in all horizons within a depth of 40 inches (1 meter) or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of the saturation extract is less than 4 mmhos/cm and the exchangeable sodium percentage (ESP) is less than 15.

(vi) The soils are not flooded frequently during the growing season (less than once in 2 years).

(vii) The product of K (erodibility factor) x percent slope is less than 2.0, and the product of I (soils erodibility) x C (climatic factor) does not exceed 60.

(viii) The soils have a permeability rate of at least 0.06 inch (0.15 cm) per hour in the upper 20 inches (50 cm), and the mean annual soil temperature at a depth of 20 inches (50 cm) is less than 59° F (15° C). The permeability rate is not a limiting factor if the mean annual soil temperature is 59° F (15° C) or higher.

(ix) Less than 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches (7.6 cm) in diameter.

(x) The soils have 4 inches or more of available water holding capacity within a depth of 40 inches (1 meter). AWC is calculated as the accumulated mean from the MUIR data.

(b) Unique farmland.

(1) General. Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to produce a sustained high quality and/or high yields of a specific crop in an economic manner when treated and managed according to acceptable farming methods. Examples of such crops are citrus, tree nuts, olives, cranberries, fruit, and vegetables.

(2) Specific characteristics of unique farmland.
(i) Is used for a specific high-value food or fiber crop.

U.S. Department of Agriculture

FARMLAND CONVERSION IMPACT RATING

PART I (To be completed by Federal Agency)	Date of Land Evaluation Request 5-1-97	
Name of Project Foy's Canyon Road	Federal Agency Involved USDoT - Federal Highway Administration MDT	
Proposed Land Use Right-of-Way/Easements		
PART II (To be completed by SCS)	Date Request Received by SCS 5-12-97	
Does the site contain prime, unique, statewide or local important farmland? Yes * No ☐ (If no, the FPPA does not apply - do not complete additional parts of this farm.)	Acres Irrigated 0	Average Farm Size 400
Major Crop(s) Small Grain, Barley, Alfalfa, Barley, Alfalfa Hay and Potatoes	Farmable Land in Govt. Jurisdiction Acres: 181666 %	Amount of Farmland as Defined in FPPA Acres: 119559 %
Name of Land Evaluation System Used UFFDA	Name of Local Site Assessment System UFFDA	Date Land Evaluation Returned by SCS 5-13-97

PART III (To be completed by Federal Agency)		Alternate Site Rating			
		Site A	Site B	Site C	Site D
A. Total Acres to be converted directly		1.6 acres			
B. Total Acres to be converted indirectly		1.08 acres			
C. Total Acres in Site		9.86 acres			
PART IV (To be completed by SCS) Land Evaluation Information					
A. Total Acres Prime and Unique Farmland		2.27 acres			
B. Total Acres Statewide and Local Important Farmland		-			
C. Percentage of Farmland in County or Local Govt., unit to be converted		.0019			
D. Percentage of farmland in Govt. Jurisdiction with same or higher relative value.		26			
PART V (To be completed by SCS) Land Evaluation Criterion Relative Value of Farmland to be converted (Scale of 0 to 100 Points)		100			
PART VI (To be completed by Federal Agency) Site Assessment Criteria (These criteria are explained in 7 CFR 658.8(b))	Max. Pts.				
1. Area Nonurban Use	15	12			
2. Perimeter in Nonurban Use	10	10			
3. Percent of Site Being Farmed	20	10			
4. Protection Provided by State and Local Govt.	20	0			
5. Distance from Urban Builtup Area	N/A	0			
6. Distance to Urban Support Services	N/A	0			
7. Size of present farm unit compared to average	10	2			
8. Creation of nonfarmable farmland	25	25			
9. Availability of farm support services	5	5			
10. On-farm investments	20	15			
11. Effects of conversion on farm support services	25	25			
12. Compatibility with existing agricultural use	10	6			
TOTAL SITE ASSESSMENT POINTS	160	110			
PART VII (To be completed by Federal Agency)					
Relative value of farmland (From Part V)	100	100			
Total Site Assessment (From Part VI above or a local site assessment)	160	110			
TOTAL POINTS (Total of above 2 lines)	260	210			

Site Selected:	Date of Selection	Was a Local Site Assessment Used? Yes No ☐

Reason for Selection: Site A: Since the total socre is less than 160, no further sites need to be considered as stated in CFR 658.4(c), Part (2) - "Sites receiving a total score of less than 160 (will) be given a minimum level of considerations for protection and no additional sites (need to) be evaluated."

(See instructions on reverse side)

C. Postcard dated October 21, 1996, from Sharlon L. Willows

1. The "Project Wetland Resource Inventory/Impact Assessment" is included in the Biological Resource Report (BRR) prepared for this project. This report, along with other reports such as the cultural resource report, are summarized in the EA document. Copies of the EA were available at the Public Hearing. The BRR is on file at MDT offices in Helena and is available for public inspection.

cc: File

Sharlon L. Willows, C.L.A.
Hungry Horse Montana
59919-0422

SENT *
10-21-96
TLY
*(WETLANDS FINDING)

Attn: C# 0733
(404)# 199690354

Foy:

Please send a copy of the "Project Wetland Resource Inventory/Impact Assessment" for this project as soon as possible. Why wasn't this background report available/displayed @ the hearing?

D. Postcard received at MDT on October 24, 1996, from Sharlon L. Willows

1. The following agencies received a copy of the EA. A total of four persons (non-agency) in Flathead County requested and were sent a copy of the EA.
2. Foy's Canyon Road Environmental Assessment Distribution List:

MDT (Helena) - 20 copies
    Environmental Quality Council - 1 copy
    State Library - 11 copies
    MDT staff - 8 copies

Kalispell Library - 3 copies

Flathead County Commissioners - 4 copies

MDT (Kalispell) - 1 copy

MT DEQ, Water Quality Bureau (Helena) - 1 copy

MT Fish, Wildlife and Parks (Helena) - 1 copy

Robert McInerney - Corps of Engineers (Helena) - 1 copy

Dale Paulson - Federal Highway Administration (Helena) - 1 copy

US Department of the Interior, Fish and Wildlife Service, Ecological Service - 1 copy

Bruce Measure - Attorney (Kalispell) - 1 copy

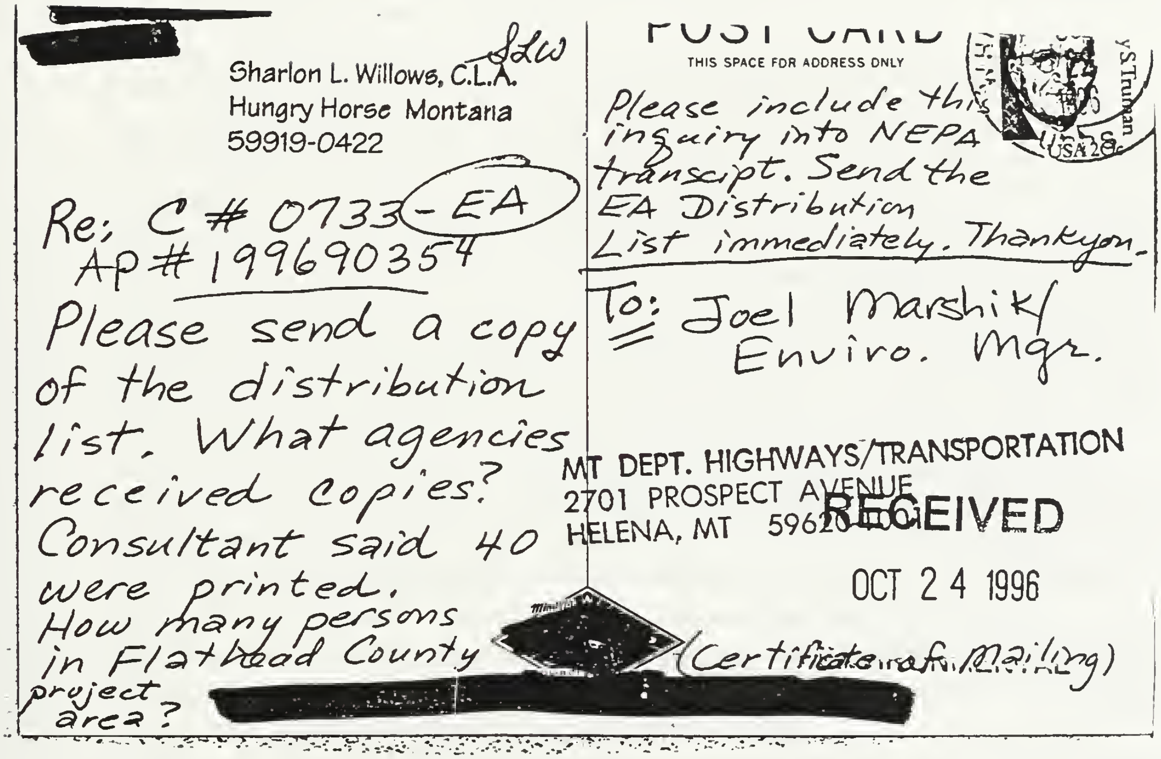
Winnifred Storli (Kalispell) - 1 copy

Sharlon Willows (Kalispell) - 1 copy

Rick Hull - The Daily InterLake (Kalispell) - 1 copy

State Representative (Kalispell) - 1 copy

Carter & Burgess:
    Kathy Harris (Helena) - 1 copy
    Mike Worrall (Missoula) - 2 copies
    Jeanette Lostracco (Denver) - 5 copies (4 + original)
    Public Hearing - 5 copies were available



[redacted]

SLW

Sharlon L. Willows, C.L.A.
Hungry Horse Montana
59919-0422

Re; C # 0733-EA
Ap # 19969035⁴

Please send a copy of the distribution list. What agencies received copies? Consultant said 40 were printed. How many persons in Flathead County project area?

[redacted]

POST CARD
THIS SPACE FOR ADDRESS ONLY

Please include this inquiry into NEPA transcipt. Send the EA Distribution List immediately. Thankyou.

To: Joel Marshik/
Enviro. Mgr.

MT DEPT. HIGHWAYS/TRANSPORTATION
2701 PROSPECT AVENUE
HELENA, MT 59620

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(Certificate of Mailing)

E. Letter dated October 11, 1996, from Sharlon L. Willows

1. There is no requirement for NEPA documents to disclose past court history for a project. Recent controversy is included in Chapter 5.0 Comments and Coordination of the EA.
2. The discharge estimate for the 404 permit application was for jurisdiction wetlands or waters of the U.S., not floodplains.
3. We disagree, the hydraulics design report does not need to be included in the EA. A summary of pertinent information is included in Section 4.12 of the EA.
4. The hydraulics design report is on file at the MDT offices in Helena and is available to the public for inspection. The typical cross-section is shown on Figure 2-5 of the EA, specific cross-sections for specific locations are not included in the EA, nor are they required. Culvert designs are described in Section 4.12 of the EA. Floodplain impacts are disclosed in Section 4.12 of the EA, we assumed this is what is meant by "significant hydrologic impacts." Floodplain fill breakdown for the various floodplain impact sites is not required in the EA, a summary of fill in floodplains is given in Section 4.12 of the EA. Specific fill information will be contained in the floodplain permit application to Flathead County. The determination of the ordinary highwater line was done in the field. This determination may be done anytime of year because a high water event has 50% chance of happening each year. The determination is made in part by looking at the stream banks, vegetation won't grow below the ordinary high water line because it is washed out by high water events. There is no need or requirement to conduct ordinary high water determinations in spring. Regarding scale of maps - we assume this is regarding wetland maps. The wetland maps provided show the general location of wetlands. Larger scale maps were displayed at the public hearing.
5. Impacts to fisheries will include temporary sedimentation impacts to water quality.

Joel Marshik

This was sent to you
so sent original on to
Lyle Manley. PT

Sharlon L. Willows, C.L.A.
Certified Legal Assistant Administrative Law
POB 422
Hungry Horse, MT 59919-0422

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Oct. 11, 1996

ATTN: Reference # 199690354 - Memo from Corps of Engineers (10/1/96) regarding MDT's 404 permit application for Foys Canyon Road, SW of Kalispell - Serious data omission in Application - Request for more information & an Individual 404 Permit.

Memorandum To: See Distribution List

Ladies and Gentlemen;

I have worked as a research & NEPA paralegal on this case for several years (ie. Cause #DV95-066A and now, this subsequent EA re-evaluation & 404 Application). The EA for Project R5(504)-1(4)4 fails to mention the background of court history for this project. The EA fails miserably at resolving the background and continuing controversy and, in fact, does not mention it. Instead, no major controversy has been resolved and facts necessary for 404 Permit have been falsified and/or concealed in the Application and the EA.

I am alarmed by very serious badfaith data omissions in MDT's Environmental Assessment (Sept. 1996, Control No. 0733) and in MDT's Permit Application (Aug. 27, 1996) - ie. See attachment on Storli's Farm. These serious omissions of data disguise material facts necessary to understand floodplain, wetland, and stream hydrology in the affected project areas.

Furthermore, the discharge estimate in the Application (item no. 21 - 103.5 cy) apparently does not

include the fill estimate for a 12 ft. high superelevated highway cross section through the low-lying Storli farm (all located within Base Flood - see enclosed map !). The EA Consultant at the public open house could not verify any factual matters in this regard (10/9/96) and referred me to the MDT's unreleased Hydraulics Design Report (that) should be included in the EA/404 Permit records for agency & public review.

Where is the MDT's secret "Hydraulics Design Report" with the calculations and plans? Where is the Proposed Super-Elevated Cross Section for over the Birch/Patrick Creek confluence (Storli's Farm)? Where are the culvert designs for this confluence? When will significant hydrologic impacts be disclosed ? Where are the fill breakdowns for the various impact sites ? When will MDT explain how OHW, floodplain & base flood calculations are being accomplished when their hydrology assessments were conducted in October (rather than at spring high water)? How can any real assessment be conducted by affected landholders & others without site-specific larger scale maps of the fill locations? MDT's miniscule no scale maps (as shown in EA & 404 Application) serve only to obfuscate.

Please allow and require inclusion of the MDT Hydraulic Design Report and the Super-Elevated Cross Section (secretly) proposed for across the Storli farm base floodplain as soon as possible *before* the comment deadlines on Oct. 17 and Oct. 25. Thank you very much for your immediate attention to these matters regarding 18 U.S.C. Section 1001 and 33 U.S.C. 1413, Section 404.

Sharlon L. Willows C.L.A., Certified Legal Assistant Administrative Law, 59919-0422, 387-5872

CC: Fisheries FWP, 11/21/95

Distribution List:

Robert E. McInerney, Montana Program Manager, Corps of Engineers 406-441-1375
Certified Mail P 244 734 020
USFWS (Hazelwood)
MFWP, Kalispell (Deleray)
DNRC, Msla (Fairbanks)
EPA Helena (Blodnick)
DEQ Helena (Ryan)
Flathead Regional Development Office (Attn: Floodplain-Mulcahy & Sawyer)
Per and Winniefred Storli
Dallas Herron
Attorney Bruce Measure
FHWA (Cloud & Paulson)
✓ MDT (Marshik) FOR INCLUSION IN TRANSCRIPT OF PUBLIC HEARING
Certified Mail P 244 734 021

Attachment to Sharlon Willows Letter

Montana Department
of
Fish, Wildlife & Parks

Region One, 490 N. Meridian
Kalispell, MT 59901
(406) 752-5501
FAX: (406) 257-0349

Ref: MD025.96
November 21, 1995

Ginger Thomas Consulting
502 Livingston Avenue
Missoula, MT 59801

Dear Ginger:

On November 20, we conducted a quick survey of Patrick Creek at the upper road crossing. Using a backpack electrofishing unit, we sampled roughly 100-150 meters of stream. This effort was in response to your request for fisheries information. Although this survey did shed some light on the fisheries component, I must stress that this quick look should not be considered a complete survey of the drainage. A more extensive survey is needed to determine presence or absence of trout species in Patrick Creek.

We collected 29 eastern brook trout (*Salvelinus fontinalis*) and observed a number of other trout which we were unable to capture. As you are aware the streambanks are a brush jungle, making netting fish difficult. Captured brook trout ranged in size from 62 to 152 mm in total length. The resident trout appeared to be fairly abundant, although no density estimate was attempted. We did not capture any westslope cutthroat trout (*Oncorhynchus clarki lewisi*), although the survey was not extensive and did not determine absence.

I hope this information is helpful. If I uncover more fisheries information, I will pass it along. If you have questions, please call.

Sincerely,

Mark Deleray

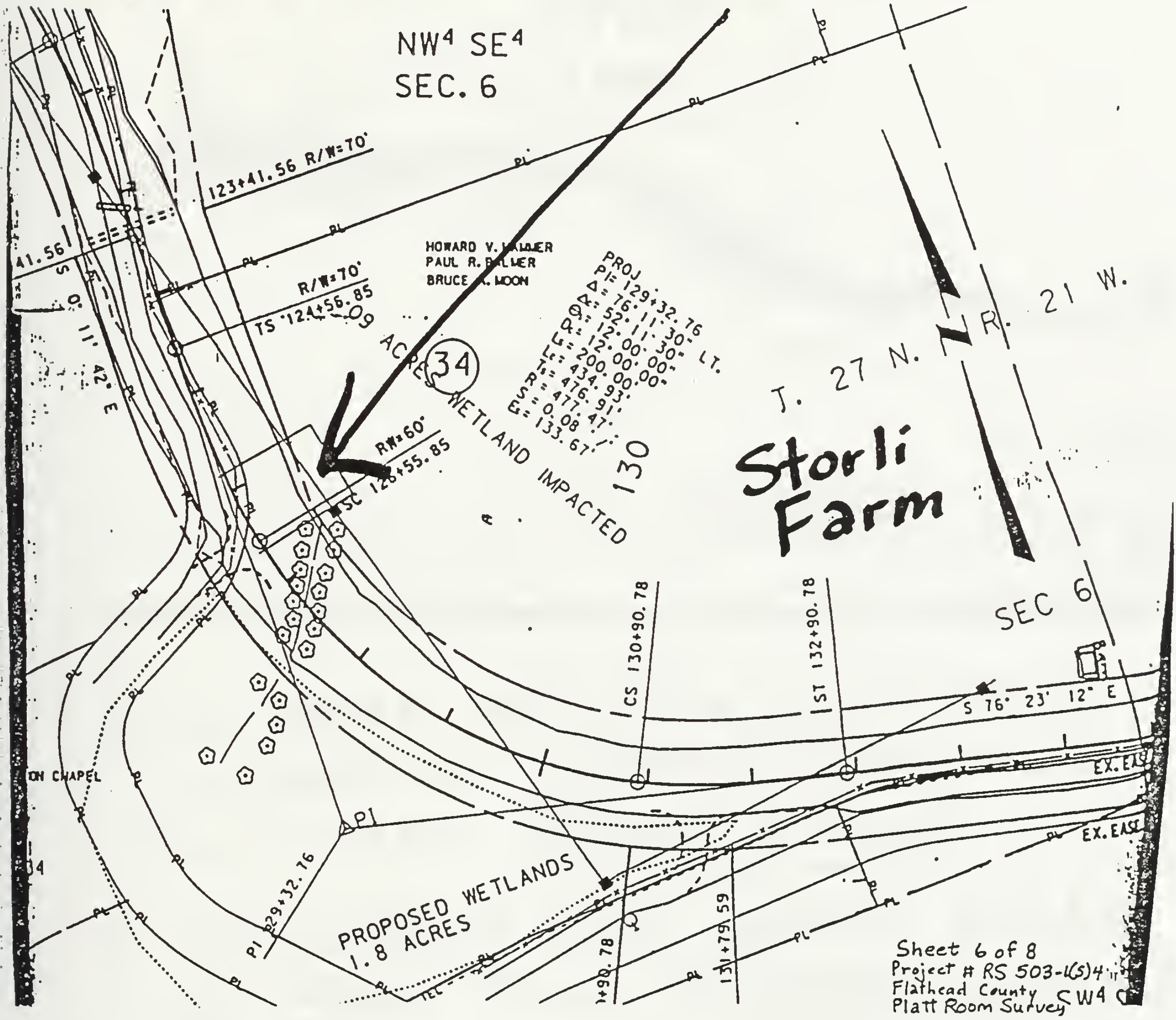
Mark Deleray
Fisheries Biologist

/ss

* EA fails to address
Impact on Fisheries.

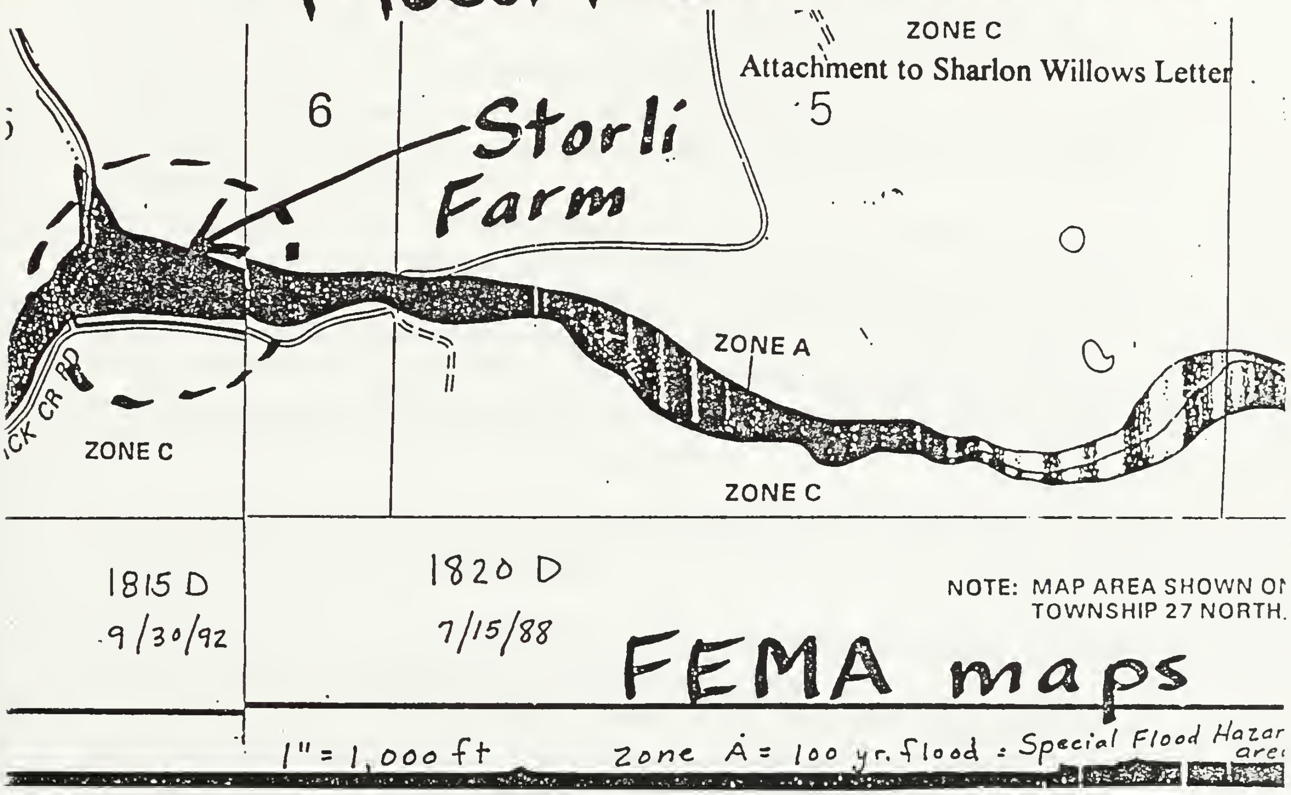
Attachment to Sharlon Willows Letter

EA does not disclose important stream confluence area



* individual 404 permit and appropriate graphic disclosure is needed for the stream confluence and wetland #3 area.

Avoidance Alternative For Storli Farm Flood Plain Needed



Attachment to Sharlon Willows Letter

FEMA maps

1" = 1,000 ft   Zone A = 100 yr. flood = Special Flood Hazard area

- EA does not show proposal's impact on Birch & Patrick Crk. Confluence (on Storli Farm).
- Individual 404 permit needed for Storli Farm floodplain/wetland #3.
- EA does not show cross sections of elevated roadway proposed thru the core of Zone A floodplain and thru the confluence area.

F. Letter dated October 22, 1996, from Sharlon L. Willows

1. The U.S. Army Corps of Engineers (Corps) is responsible for administering Section 404 of the Clean Water Act. The Corps will determine whether a draft 404(b)(1) evaluation with public hearing are required.
2. A location hydraulic study is not required to be included within a NEPA document.
3. The FHWA will decide whether the EA contains sufficient evidence and analysis for determining a FONSI.
4. The floodplain analysis contained in Section 4.12 of the EA is believed to be correct. No efforts to conceal information have been made. Cross-sections of the preferred alternative for specific locations are not required and are not provided in the EA. A narrative description is provided in Section 4.12 of the EA. The hydraulic calculations are on file at MDT - Helena's design engineering office. These calculations and fill locations are not required to be included nor are they typically included in a FHWA-NEPA document.

   The floodplain analysis is fully disclosed in Section 4.12 of the EA, and the EA was available for public review and comment.

5. The wetland finding is a part of the Biological Resource Report (BRR). Requests for copies of this document have been or will be fulfilled.
6. The hydraulic study is on file at MDT-Helena. The project does not involve a significant encroachment on the floodplain as described in Section 4.12 of the EA.
7. a. MDT has civil engineers qualified to perform hydraulics analysis. These engineers have undertaken the hydraulic analysis for this project and have reviewed the hydrology of the Birch Creek and Patrick Creek confluence.
   b. Wetland 3 is described in Table 4-6 of the EA as having a high function relating to groundwater discharge/recharge. The confluence of Birch and Patrick Creeks is described in Section 4.12 of the EA.

8. The main objective of a public hearing is for people to be free to express their views on a project. FHWA guidelines and policies indicate that the two major elements of a public hearing hare (1) that information be provided about the project, and (2) that public comment be received and considered in the process. There is no other requirement in any statute, ordinance, or policy regarding the exact format for a public hearing. The public open house format used by MDT for the public hearing on the EA is consistent with these two objectives

   The Federal Highway Act and NEPA **do not** set forth any specific criteria or format for the public meeting required to be held in connection with the EA. The statutes require only that the meeting provide for people to freely express their views. In addition to providing for reception and consideration of public comments, the meeting is to make available information about the project and answer questions.

Nowhere in the statutes is a specific format specified. These two formats have certain advantages and disadvantages.

The open house format provides better opportunity for presentation of complete project information and personal interpretation of that information by the individual, since he or she can examine drawings and discuss them with project personnel. It also encourages public comment from those who may dislike speaking in front of a group. This advantage was, in fact, pointed out by people who came to the hearing. This format makes it possible for people to come and go as they like, without missing critical information. The time required to receive comments in this format is usually greatly reduced from other formats since more than one person can provide testimony at a time. This format does not assure that everyone receives precisely the same information about the project, or that everyone in attendance hears all other viewpoints. However, there is full opportunity for discussion among those in attendance.

The format of presentation before an assembled group has the advantage of assuring that everyone is getting exactly the same information about the project, and that everyone in attendance hears all speakers' views on the proposal. It does not provide for interactive discussion or review of materials, nor does it provide flexibility in timing of attendance. It can discourage people from providing testimony if they are hesitant to speak in front of a group or feel intimidated by others' views. Finally, it can require a **great** deal of time to receive all testimony when many people wish to speak.

MDT determined to hold the public hearing in the open house format because it believes the advantages of that format outweigh the advantages of the format of presentation before an assembled group. The main disadvantage of that format -- that all in attendance do not hear all speakers' views -- is offset by the availability of all comments received for public review, and the presentation of all of these comments in the FONSI, which can be read by anyone requesting a copy. MDT's public hearing on October 9, 1996, was conducted in compliance with all of the requirements set forth in the Federal Highway Act and NEPA for such meetings.

a. Appropriate agencies were sent copies of the EA for review and comment. See response to Postcard dated October 24, 1996 from Sharlon L. Willows.
b. See response to comment 4 above.
c. A Notice of Availability (NOA) was published on September 16, 1996 in the *Daily Inter Lake* newspaper, Kalispell, Montana. A second Notice of Availability extending the EA comment period was published on October 17, 1996 in the *Daily Inter Lake* newspaper, Kalispell, Montana. A copy of these is contained in Appendix A of this document.

There is no requirement to provide a copy of the NOA at the Public Hearing. Those on the mailing list were notified of the Public Hearing date but not of the Notice of Availability.

d. There is no requirement to inform the public by mail of the Notice of Availability.
e. The EA background reports are not required to be available at public hearings. The background reports including the Biological Resource Report and the Cultural Resource report were summarized in the EA. The graphics displayed on the walls included both materials from previous meetings and a substantial amount of graphics prepared specifically for the public hearing.
f. See response to comment 8 above.
g. The EA document requested from the Carter & Burgess Missoula office by phone call from Sharlon L. Willows on October 2, 1996, was mailed that day to Ms. Willows. Regarding the hydraulic design report request, MDT attempts to respond as soon as possible to requests for information. We apologize for any delays or inconvenience experienced.

9. Signage and traffic control devices for this road (Secondary 503) are the responsibility of the County. Upon construction of the Preferred Alternative, MDT will install new signage appropriate to the new roadway and in conformance with state and federal law.
10. The posted speed limit will continue to be determined by the County Commission after construction of the preferred alternative. As stated in the EA, the design speed will be 40 mph. The EA and Figure 2-1 do not refer to doubling of speeds to 60 mph. As stated in the EA, the current observed operating speeds are 25-30 mph.

    A summary of how the Preferred Alternative will improve safety is included in Section 1.2 of the EA.

11. a. Foy's Canyon Road is a segment of Secondary Highway 503 which has been classified by MDT as a major collector.
    b. There is no requirement to include background court history in a NEPA document. Recent controversy is included in Chapter 5.0 Comments and Coordination of the EA.
    c. Alternatives were analyzed in the EA - Section 3.0.
    d. Controversy (opposition) for this project as evidenced at the public workshops and public hearing is limited. The majority of people attending and comments received were supportive of the project. A summary is required in an EIS, not an EA. The environmental impact of proposed agency actions is addressed in Section 4.0 of the EA. A NEPA document (Categorical Exclusion) was signed by the FHWA in 1986, any resources committed were reliant upon that document.
12. We disagree. See response to letter dated February 12, 1996, from Sharlon L. Willows.

13. The absence of discussion of fisheries impacts was an oversight. Fisheries will be impacted due to short-term sedimentation during construction. Mitigation for fisheries impacts is identified in Section 4.11.3 of the EA.
14. A 124 Stream Protection Permit was issued by the Montana Department of Fish, Wildlife and Parks on December 1, 1993 - Permit Number MDT-59-93. This permit is on file at the MDT - Helena office.

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OCT 24 1996

ENVIRONMENTAL

October 22, 1996

Comment on
Foys Canyon Road Environmental Assessment (EA)
Control No. 0733
404 Application # 199690354
Federal Aid R5(504) - 1(4)4

Need for new combined assessment document and review process that includes:

* 404(b)(1) Evaluation

The MDT Application of Aug. 27, 1996 has numerous serious data omissions regarding major design features. Anticipated severe impacts caused by the *undisclosed* potential quarter mile long dam (a superelevated highway cross section) across the Patrick Creek/Birch Creek base floodplain and confluence clearly exceeds guidelines for a National Permit @ 33 CFR 330.6(b)(13). Therefore, preparation of a draft 404(b)(1) Evaluation with public involvement hearing would be the next appropriate compliance process.

The draft EA, the 404 Application, and the public "open house" failed to respond to early substantive comment requesting a location hydraulic study and a combined EA/404(b)(1) Evaluation [see Technical Memorandum, SLW,CLA, 2/12/96 submitted to this Hearing Transcript]. The draft EA does not provide sufficient evidence and analysis for determining a finding of no significant impact.

* A Revised Floodplain Analysis

The erroneous Floodplain Analysis for the EA (discussed on pgs. 4-35 through 4-40) must be redone and fully disclosed. The superelevated cross section proposed for across the confluence has been concealed necessitating a distinct "practicable alternative" for this major impact to streambeds and base floodplain. Where are the specific calculations for the proposed significant encroachment across the Birch Creek/Patrick Creek confluence? Where are the fill breakdowns for the various impact sites? The draft EA does not provide sufficient evidence and analysis for determining a finding of no significant impact.

These floodplain issues have been highly controversial throughout this NEPA process. Therefore, the revised Floodplain Analysis should be fully disclosed and available for future public review and comment.

* Project Wetland Resource Inventory Impact Assessment

New "Interagency Operating Procedure for the Conservation of Wetland Resources Associated with (MDT)" has been adopted July 3, 1996 in accordance with the NEPA/404 merger [FHWA-RE-88-0028]. These new guidelines state:

> "MDT will ensure that a Project Wetland Resource Inventory Impact Assessment is written for each project involving wetland resources impacts, to be used in the development of the project design and required environmental documents, including a Wetland Finding... The (Wetland Assessment) will be made a part of the official record on the project and will be available to any agency or the public upon request." (p.6). [Note: SLW,CLA requested this document from MDT/Marshik on 10/15/96 - No response.]

* A Location Hydraulic Study for significant encroachment into base flood Zone A (Storli's farm)

At the public "open house" held 10/9/96, EA Preparer Mike Worrall, P.E., could not verify any factual matters regarding the undisclosed superelevated cross section proposed through the low-lying base flood zone (Storli's farm) and over the stream confluence. He referred SLW,CLA to the MDT Hydraulic Design Report which was not available at the "open house". This report was requested from EA Consultant and from MDT/Marshik on 10/10/96 [Mike Worrall called on 10/14/96 to say he did not have a copy; MDT/Marshik made no response].

This project involves a significant encroachment into the base flood plain as defined at
23 CFR 650.105(q)(3). A location hydraulic study is required as detailed at 23 CFR 650.111(c). The need for this study at the confluence of Birch & Patrick Creeks/Wetland #3 groundwater recharge area was fully identified for this EA eight months ago (see Technical Memorandum by SLW,CLA, 2/12/96 submitted to this Hearing Transcript). The EA did not respond and the Hydraulic Design Report was not available for public review.

Review by a professional hydrologist is necessary. A full disclosure study and identification of this "special aquatic site" is warranted [see 40 CFR 230 Subpt. E]. The MDT nor the Consultant have necessary hydrologic expertise. A P.E. is not a hydrologist. A P.E. does not have expertise to evaluate the "complicated surface/groundwater relationship" between Birch Creek and its' confluence with Patrick Creek/Wetland #3 (4-20,21). The base flood Zone A (Storli Farm) is a sensitive aquatic environment that includes (2) converging streams and a groundwater-discharge/recharge area (wetland #3). This complex hydrology was not disclosed in the EA. Special expertise is needed to document the unique surface and groundwater hydrology at the project base flood Zone A. The MDT has failed to perform necessary hydrologic assessment and disclosure of the Storli farm area that includes

streams, wetlands, groundwater recharge/discharge areas, and the base flood zone.

23 U.S.C 128 Noncompliance - A proper Public Hearing is needed with information available and an organized presentation

The purpose of hearing required by this statute is "to afford full opportunity for effective public participation... and to give all interested persons opportunity to become fully acquainted with highway proposals of concern...before hearing under this section, (NEPA document) must be made available to the public so that views based on accurate and complete environmental information may be expressed by participants (including) full study and analysis of environmental effects..." Davis v. Coleman, 521 F2d 661, 5 ELR 20633. "Additional hearings need to be held with respect to major submissions...Lathan v. Brinegar, 506 F2d 677, 4 ELR 20802.

The MDT's "Open House" (10/9/96) fails to meet the purpose of Public Hearing requirements for this Federal Aid Highway statute @ 23 CFR 771.111 & 40 CFR 1506.6 (with further public hearing applicability @ 33 CFR 327):

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As research paralegal, this number was contacted twice: (1) I called on 10/2/96 in attempt to obtain a copy of the EA - the consulting firm Carter & Burgess said to contact Denver (then EA preparer Mike Worrall called stating they had only one copy in the office); and, (2) I called on 10/10/96 requesting a copy of the Hydraulic Design Report and base flood cross sections - EA preparer Mike Worrall returned the call on 10/14/96 stating their firm did not have a copy (likewise, this information was requested from MDT/Marshik on 10/10/96 with no response).

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If honest analyses were to occur, the MDT proposed design may well exacerbate accidents caused by winter conditions in vertically steep riparian terrain. Winter driving conditions occur more than 50% of the year in this country (October through March/April).

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Explicitly contrary to NEPA, the MDT and their consultant have taken extraordinary measures to "hide" significant environmental effects and ongoing major controversy. Most controversial is the fact

Foys Canyon Road does not meet Federal criteria for functional classification as a "Major Collector" [compare official definition in FHWA-ED-90-006, p. II-10, with the route's description in EA Introduction, p. 2-1]. Foys Canyon Road is clearly a "Minor Collector Road" under Federal Highway Functional Classification Procedures (p. II-10 attached). Without the erroneous classification as a secondary road (major collector), MDT cannot justify necessity for Eminent Domain proceedings.

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For example: the draft EA, the draft 404 Application and the public open house information failed to respond to all substantive comments discussed in Technical Memorandum by SLW,CLA, as entered into the official project records on February 12, 1996.

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Fisheries are not addressed nor shown in the EA. Fisheries are not listed in the Table of Contents. Fisheries are not mentioned in EA Section on "Water Resources" (p.4-20-21). Do trout utilize adjacent wetland #3, a groundwater discharge area, as connected habitat? Where are the spawning areas?

Certainly, with major serious data omissions regarding MDT design feature that lays a superelevated highway over the stream confluence (the fishery), the EA does not provide sufficient evidence and analysis for determining a finding of no significant impact.

MT Stream Protection Act M.C.A. 87-5-501-507

The 404 Permit Application submitted by MDT (August 27, 1996) claims MDT has a "124" Permit approved 11/1/93 (#MDT-59-93). There is no evidence to support this claim.

Prepared by:
Sharlon L. Willows, C.L.A.
Hungry Horse, MT 59919-0422
Sharlon L. Willows

October 22, 1996

Distribution List:

MDT (Marshik) FOR INCLUSION IN TRANSCRIPT OF PUBLIC HEARING
Cert. # P 244 734 021
Robert E. McInerney, Montana Program Manager, Corps of Engineers
Per and Winnifred Storli
Attorney Bruce Measure + Enclosures
FHWA (Cloud & Paulson)
FWP
D. Herron
bcc Tom Esch

Attachment to Sharlon Willows Letter

Sharlon L. Willows, C.L.A.
Certified Legal Assistant Administrative Law
POB 422
Hungry Horse, MT 59919-0422

Oct. 11, 1996

ATTN: Reference # 199690354 - Memo from Corps of Engineers (10/1/96) regarding MDT's 404 permit application for Foys Canyon Road, SW of Kalispell - Serious data omission in Application - Request for more information & an Individual 404 Permit.

Memorandum To: See Distribution List

Ladies and Gentlemen;

I have worked as a research & NEPA paralegal on this case for several years (ie. Cause #DV95-066A and now, this subsequent EA re-evaluation & 404 Application). The EA for Project R5(504)-1(4)4 fails to mention the background of court history for this project. The EA fails miserably at resolving the background and continuing controversy and, in fact, does not mention it. Instead, no major controversy has been resolved and facts necessary for 404 Permit have been falsified and/or concealed in the Application and the EA.

I am alarmed by very serious badfaith data omissions in MDT's Environmental Assessment (Sept. 1996, Control No. 0733) and in MDT's Permit Application (Aug. 27, 1996) - ie. See attachment on Storli's Farm. These serious omissions of data disguise material facts necessary to understand floodplain, wetland, and stream hydrology in the affected project areas.

Furthermore, the discharge estimate in the Application (item no. 21 - 103.5 cy) apparently does not

Distribution List:

Robert E. McInerney, Montana Program Manager, Corps of Engineers 441-1375
Certified Mail P 244 734 020
USFWS (Hazelwood)
MFWP, Kalispell (Deleray)
DNRC, Msla (Fairbanks)
EPA Helena (Blodnick)
DEQ Helena (Ryan)
Flathead Regional Development Office (Attn: Floodplain-Mulcahy & Sawyer)
Per and Winniefred Storli
Dallas Herron
Attorney Bruce Measure
FHWA (Cloud & Paulson)
MDT (Marshik) FOR INCLUSION IN TRANSCRIPT OF PUBLIC HEARING
Certified Mail P 244 734 021

G. Letter dated October 25, 1996, from Bruce A. Measure

1. The Public Hearing held on October 9, 1996, was a Public Hearing with a transcriber and transcript of the hearing provided in Appendix A of this document.
2. See response to oral comments received at Public Hearing from Bruce Measure #17.
3. A description of Foy's Canyon Road eligibility for federal funding is included in Section 2.1 of the EA.
4. Montana law regarding speed restriction is "careful and prudent manner."
5. Alternatives are identified in Section 3.0 of the EA.
6. See response to comment 2 above. There is no requirement to disclose specific design details within a NEPA document.
7. We believe your reference to MDT's application may mean the Section 404 permit application to the Corps. If so, no floodplain analysis is required in a Section 404 permit application. However, if your reference is to the EA, the floodplain analysis is included in Section 4.12 and a wetland finding was prepared as part of the Biological Resource Report (BRR) for this project. The BRR is available to the public upon request from the MDT, and is available for inspection by the public at the MDT office in Helena.

Law Office of
AMBROSE G. MEASURE
33 Second Street East
Kalispell, Montana 59901

Ambrose G. Measure
Bruce A. Measure
Attorneys at Law

Mailing Address:
P.O. Box 918
Kalispell, MT 59903
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FAX: (406) 752-7168

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cc: Jim Weaver
Joel Marshik
Gordon Stocksta

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED
October 25, 1996

Montana Department of Transportation
Attention: Gordon Stockstad and Joe Marshik
2701 Prospect Avenue
Helena, Montana 59620

Re: 199690354 Foys Canyon Road

Dear Messrs. Stockstad and Marshik:

I am writing again to comment on the public meetings and the environmental assessment for Foys Canyon Road. First I would comment that none of the meetings have been actual hearings, as there has been inadequate opportunity to comment on the road. The comments are limited by not having a public forum and only having stations where one may give sound bites to individuals from the Department and others, to write on a little 3 x 5 card. It is impossible for any individual to meaningfully comment on the impact of the road in this fashion, because the individual first has to narrow their scope, and second, Carter & Burgess and the Department of Transportation's individuals recording the information are poor transcriptionists and prone to paraphrasing the public comments. Thus, no meaningful transcript may be made of the meeting.

Therefore, there is inadequate evidence and analysis for determining a finding of no significant impacts. I request at this point that the Department prepare an EIS prior to FONSI. In addition, although I do not believe Foys Canyon is eligible for federal funding as a secondary road because it does not meet the federal criteria. If it is, the way to reduce accidents is to implement MCA § 61-8-203, and do a highway safety improvement project on the road.

I think the Department is negligent in claiming that there is a super high accident rate on the Foys Canyon Road in failing to address it in any fashion other than ramming a controversial major construction project down the citizenry's throat, without offering some alternative. It seems more appropriate to push a safety improvement project while federal funding is available, rather than pursue overbuilding Foys Canyon Road with so little traffic.

I also do not believe that you have "insured adequate opportunity for a public hearing on the effects" as required by 23 U.S.C. 128. Since the impacts of the elevated potential quarter mile long dam across Patrick and Birch Creek flood plain and confluence is a major design feature that has not been disclosed. Without a "real" public hearing under the Clean Water Act, you have violated your duty to insure adequate review. This has been noted by a number of individuals, both orally and in written comments, including paralegal Sharlon Willows, whose comments I include for the record.

MDOT's application contains serious data omissions regarding major decision features. The application failed to respond to substantive comments from the public. There is no revision of the flood plain analysis, and you have failed to insure the project wetland resource inventory impact assessment has been written for the project, or at least if one has been written for it, it was not part of the official record available to the public. That document was requested by Sharon Willows from Mr. Marshik on October 15, 1996, without response.

Ms. Willows' memo further spells out other deficiencies in the process. I ask that these be included, reviewed, and an environmental impact statement be pursued, and encourage the Department to pursue a safety improvement project instead of the proposed over build of Foys Canyon Road.

Sincerely,

Bruce A. Measure

BAM:tlk
Enclosure
cc: Robert McInerney
Sharon Willows
Per and Winnifred Storli
Dallas Herron
Richard Reynolds

Attachment to Bruce Measure's Letter

October 22, 1996

Comment on
Foys Canyon Road Environmental Assessment (EA)
Control No. 0733
404 Application # 199690354
Federal Aid R5(504) - 1(4)4

Need for new combined assessment document and review process that includes:

* 404(b)(1) Evaluation

The MDT Application of Aug. 27, 1996 has numerous serious data omissions regarding major design features. Anticipated severe impacts caused by the *undisclosed* potential quarter mile long dam (a superelevated highway cross section) across the Patrick Creek/Birch Creek base floodplain and confluence clearly exceeds guidelines for a National Permit @ 33 CFR 330.6(b)(13). Therefore, preparation of a draft 404(b)(1) Evaluation with public involvement hearing would be the next appropriate compliance process.

The draft EA, the 404 Application, and the public "open house" failed to respond to early substantive comment requesting a location hydraulic study and a combined EA/404(b)(1) Evaluation [see Technical Memorandum, SLW,CLA, 2/12/96 submitted to this Hearing Transcript]. The draft EA does not provide sufficient evidence and analysis for determining a finding of no significant impact.

* A Revised Floodplain Analysis

The erroneous Floodplain Analysis for the EA (discussed on pgs. 4-35 through 4-40) must be redone and fully disclosed. The superelevated cross section proposed for across the confluence has been concealed necessitating a distinct "practicable alternative" for this major impact to streambeds and base floodplain. Where are the specific calculations for the proposed significant encroachment across the Birch Creek/Patrick Creek confluence? Where are the fill breakdowns for the various impact sites? The draft EA does not provide sufficient evidence and analysis for determining a finding of no significant impact.

These floodplain issues have been highly controversial throughout this NEPA process. Therefore, the revised Floodplain Analysis should be fully disclosed and available for future public review and comment.

* Project Wetland Resource Inventory Impact Assessment

New "Interagency Operating Procedure for the Conservation of Wetland Resources Associated with (MDT)" has been adopted July 3, 1996 in accordance with the NEPA/404 merger [FHWA-RE-88-0028]. These new guidelines state:

> "MDT will ensure that a Project Wetland Resource Inventory Impact Assessment is written for each project involving wetland resources impacts, to be used in the development of the project design and required environmental documents, including a Wetland Finding... The (Wetland Assessment) will be made a part of the official record on the project and will be available to any agency or the public upon request." (p.6). [Note: SLW,CLA requested this document from MDT/Marshik on 10/15/96 - No response.]

* A Location Hydraulic Study for significant encroachment into base flood Zone A (Storli's farm)

At the public "open house" held 10/9/96, EA Preparer Mike Worrall, P.E., could not verify any factual matters regarding the undisclosed superelevated cross section proposed through the low-lying base flood zone (Storli's farm) and over the stream confluence. He referred SLW,CLA to the MDT Hydraulic Design Report which was not available at the "open house". This report was requested from EA Consultant and from MDT/Marshik on 10/10/96 [Mike Worrall called on 10/14/96 to say he did not have a copy; MDT/Marshik made no response].

This project involves a significant encroachment into the base flood plain as defined at
23 CFR 650.105(q)(3). A location hydraulic study is required as detailed at 23 CFR 650.111(c). The need for this study at the confluence of Birch & Patrick Creeks/Wetland #3 groundwater recharge area was fully identified for this EA eight months ago (see Technical Memorandum by SLW,CLA, 2/12/96 submitted to this Hearing Transcript). The EA did not respond and the Hydraulic Design Report was not available for public review.

Review by a professional hydrologist is necessary. A full disclosure study and identification of this "special aquatic site" is warranted [see 40 CFR 230 Subpt. E]. The MDT nor the Consultant have necessary hydrologic expertise. A P.E. is not a hydrologist. A P.E. does not have expertise to evaluate the "complicated surface/groundwater relationship" between Birch Creek and its' confluence with Patrick Creek/Wetland #3 (4-20,21). The base flood Zone A (Storli Farm) is a sensitive aquatic environment that includes (2) converging streams and a groundwater-discharge/recharge area (wetland #3). This complex hydrology was not disclosed in the EA. Special expertise is needed to document the unique surface and groundwater hydrology at the project base flood Zone A. The MDT has failed to perform necessary hydrologic assessment and disclosure of the Storli farm area that includes

streams, wetlands, groundwater recharge/discharge areas, and the base flood zone.

23 U.S.C 128 Noncompliance - A proper Public Hearing is needed with information available and an organized presentation

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Hungry Horse, MT 59919-0422
Sharlon L. Willows

Attachment to Bruce Measure's Letter

October 22, 1996

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FWP
D. Herron
bcc Tom Esch

generators, such as major resort areas, that are capable of attracting travel over similarly long distances) and form an integrated network providing interstate and intercounty service.

2. Be spaced at such intervals, consistent with population density, so that all developed areas of the State are within a reasonable distance of an arterial highway.

3. Provide (because of the two characteristics defined immediately above) service to corridors with trip lengths and travel density greater than those predominantly served by rural collector or local systems. Minor arterials therefore constitute routes whose design should be expected to provide for relatively high overall travel speeds, with minimum interference to through movement.

Rural collector road system

The rural collector routes generally serve travel of primarily intracounty rather than statewide importance and constitute those routes on which (regardless of traffic volume) predominant travel distances are shorter than on arterial routes. Consequently, more moderate speeds may be typical, on the average.

In order to define more clearly the characteristics of rural collectors, this system should be subclassified according to the following criteria:

Major collector roads.--These routes should: (1) Provide service to any county seat not on an arterial route, to the larger towns not directly served by the higher systems, and to other traffic generators of equivalent intracounty importance, such as consolidated schools, shipping points, county parks, important mining and agricultural areas, etc.; (2) link these places with nearby larger towns or cities, or with routes of higher classification; and (3) serve the more important intracounty travel corridors.

Minor collector roads.--These routes should: (1) Be spaced at intervals, consistent with population density, to collect traffic from local roads and bring all developed areas within a reasonable distance of a collector road; (2) provide service to the remaining smaller communities; and (3) link the locally important traffic generators with their rural hinterland.

Rural local road system

The rural local road system should have the following characteristics: (1) Serve primarily to provide access to adjacent land; and (2) provide service to travel over relatively short distances as compared to collectors or other higher systems. Local roads will, of course, constitute the rural mileage not classified

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ADDENDUM

(I.) Scientific and analytical accuracy requirements/Environmental Consequences

40 CFR 1502.16 (a-h) environmental consequences section must form scientific and analytical basis for comparisons(of alternative

40 CFR 1502.24 requirements for explicit reference by footnote to scientific and other sources relied upon for EIS conclusion.

40 CFR 1500.2(b) EISs shall be supported by evidence that agencies have made necessary environmental analysis.

40 CFR 1506.5(a) agency responsibility for accuracy of EIS informatio

40 CFR 1507.2(e) agency capability to comply by initiating and utilizing ecological information.

40 CFR 1500.1(b) agency responsibility for information of high qualit essential to implement NEPA.

(II.) Need for on-going analysis, disclosure of new information, appropriate referencing, etc.

40 CFR 1501.2(b) appropriate analysis shall be circulated and reviewed at same time as other planning documents.

40 CFR 1502.21 EIS must appropriately incorporate by reference.

40 CFR 1502.18 EIS must add as appendix substantial or subsequent analysis, material prepared in connection with EIS.

40 CFR 1506.4 EIS process must combine documents.

40 CFR 1500.4(o), 1506.4, 1500.5(i) relevant available agency analysis must be combined into subsequent environmental document.

40 CFR 1502.10(j) requirement for index in EIS.

(III.) Need for FEIS discussion supporting balanced relationship between unquantified (qualitative) environmental values and Cost/Benefit Analyses

40 CFR 1507.2(b) EIS must identify methods and procedures required to insure that presently unquantified environmental amenitie and values are appropriately considered.

40 CFR 1502.2(g) EIS is tool for unbiased best assessments rather tha a justification for decisions already made.

40 CFR 1501.2(b) agency responsibility to identify environmental effects and values in adequate detail so they can be compared to economic and technical analysis.

40 CFR 1502.23 Along with cost/benefit analysis, an EIS shall discuss the relationship between that analysis and any analysis of unquantified environmental impacts, values, and amenities.

(IV.) Need for adequate "Mitigation" format and discussion

40 CFR 1502.16 (e,h) required discussion on means to mitigate adverse environmental impacts (ie. implementation of monitoring and evaluation)

40 CFR 1502.24 and 1502.21 requirements for explicit references by footnote to scientific and other sources relied upon for EIS conclusion.

40 CFR 1500.4, 1502.10 requirements for a "clear format" in EIS.

40 CFR 1505.3 lead agency shall condition funding of actions on mitigation.

direct coordination through the Office of the Assistant Secretary of the Army (Civil Works) with the Department of Justice. Further, the case record should not be closed if the district engineer anticipates that further administrative enforcement actions, taken in accordance with the procedures prescribed in this part, will identify remedial measures which, if not complied with by the parties responsible for the violation, will result in appropriate legal action at a later date.

PART 327—PUBLIC HEARINGS

33 CFR

Sec.
327.1 Purpose.
327.2 Applicability.
327.3 Definitions.
327.4 General policies.
327.5 Presiding officer.
327.6 Legal adviser.
327.7 Representation.
327.8 Conduct of hearings.
327.9 Filing of transcript of the public hearing.
327.10 Authority of the presiding officer.
327.11 Public notice.

Authority: 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 327.1 Purpose.

This regulation prescribes the policy, practice and procedures to be followed by the U.S. Army Corps of Engineers in the conduct of public hearings conducted in the evaluation of a proposed DA permit action or Federal project as defined in § 327.3 of this Part including those held pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344) and section 103 of the Marine Protection, Research and Sanctuaries Act (MPRSA), as amended (33 U.S.C. 1413).

§ 327.2 Applicability.

This regulation is applicable to all divisions and districts responsible for the conduct of public hearings.

§ 327.3 Definitions.

(a) Public hearing means a public proceeding conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed DA permit action, or Federal project, and which affords the public an opportunity to present their views, opinions, and information on such permit actions or Federal projects.

(b) Permit action, as used herein means the evaluation of and decision on an application for a DA permit pursuant to sections 9 or 10 of the Rivers and Harbors Act of 1899, section 404 of the Clean Water Act, or section 103 of the MPRSA, as amended, or the modification, suspension or revocation of any DA permit (see 33 CFR 325.7).

(c) Federal project means a Corps of Engineers project (work or activity of any nature for any purpose which is to be performed by the Chief of Engineers pursuant to Congressional authorizations) involving the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters subject to section 404 of the Clean Water Act, or section 103 of the MPRSA.

§ 327.4 General policies.

(a) A public hearing will be held in connection with the consideration of a DA permit application or a Federal project whenever a public hearing is needed for making a decision on such permit application or Federal project. In addition, a public hearing may be held when it is proposed to modify or revoke a permit. (See 33 CFR 325.7).

(b) Unless the public notice specifies that a public hearing will be held, any person may request, in writing, within the comment period specified in the public notice on a DA permit application or on a Federal project, that a public hearing be held to consider the material matters at issue in the permit application or with respect to Federal project. Upon receipt of any such request, stating with particularity the reasons for holding a public hearing, the district engineer may expeditiously attempt to resolve the issues informally. Otherwise, he shall promptly set a time and place for the public hearing, and give due notice thereof, as prescribed in § 327.11 of this Part. Requests for a public hearing under this paragraph shall be granted, unless the district engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing. The district engineer will make such a determination in writing, and communicate his reasons therefor to all requesting parties. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition.

✓ (c) In case of doubt, a public hearing shall be held. HQDA has the discretionary power to require hearings in any case.

(d) In fixing the time and place for a hearing, the convenience and necessity of the interested public will be duly considered.

§ 327.5 Presiding officer.

(a) The district engineer, in whose district a matter arises, shall normally serve as the presiding officer. When the district engineer is unable to serve, he may designate the deputy district engineer or other qualified person as presiding officer. In cases of unusual interest, the Chief of Engineers or the division engineer may appoint such person as he deems appropriate to serve as the presiding officer.

(b) The presiding officer shall include in the administrative record of the permit action the request or requests for the hearing and any data or material submitted in justification thereof, materials submitted in opposition to or in support of the proposed action, the hearing transcript, and such other material as may be relevant or pertinent to the subject matter of the hearing. The administrative record shall be available for public inspection with the exception of material exempt from disclosure under the Freedom of Information Act.

§ 327.6 Legal adviser.

At each public hearing, the district counsel or his designee may serve as legal advisor to the presiding officer. In appropriate circumstances, the district engineer may waive the requirement for a legal advisor to be present.

§ 327.7 Representation.

At the public hearing, any person may appear on his own behalf, or may be represented by counsel, or by other representatives.

§ 327.8 Conduct of hearings.

(a) The presiding officer shall make an opening statement outlining the purpose of the hearing and prescribing the general procedures to be followed.

(b) Hearings shall be conducted by the presiding officer in an orderly but expeditious manner. Any person shall be permitted to submit oral or written statements concerning the subject matter of the hearing, to call witnesses who may present oral or written statements, and to present recommendations as to an appropriate decision. Any person may present written statements for the hearing record prior to the time the hearing record is closed to public submissions, and may present proposed findings and recommendations. The presiding officer shall afford participants a reasonable opportunity for rebuttal.

(c) The presiding officer shall have discretion to establish reasonable limits upon the time allowed for statements of witnesses, for arguments of parties or their counsel or representatives, and upon the number of rebuttals.

(d) Cross-examination of witnesses shall not be permitted.

(e) All public hearings shall be reported verbatim. Copies of the transcripts of proceedings may be

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purchased by any person from the Corps of Engineers or the reporter of such hearing. A copy will be available for public inspection at the office of the appropriate district engineer.

(f) All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, subject to exclusion by the presiding officer for reasons of redundancy, be received in evidence and shall constitute a part of the record.

(g) The presiding officer shall allow a period of not less than 10 days after the close of the public hearing for submission of written comments.

(h) In appropriate cases, the district engineer may participate in joint public hearings with other Federal or state agencies, provided the procedures of those hearings meet the requirements of this regulation. In those cases in which the other Federal or state agency allows a cross-examination in its public hearing, the district engineer may still participate in the joint public hearing but shall not require cross examination as a part of his participation.

§ 327.9 Filing of the transcript of the public hearing.

Where the presiding officer is the initial action authority, the transcript of the public hearing, together with all evidence introduced at the public hearing, shall be made a part of the administrative record of the permit action or Federal project. The initial action authority shall fully consider the matters discussed at the public hearing in arriving at his initial decision or recommendation and shall address, in his decision or recommendation, all substantial and valid issues presented at the hearing. Where a person other than the initial action authority serves as presiding officer, such person shall forward the transcript of the public hearing and all evidence received in connection therewith to the initial action authority together with a report summarizing the issues covered at the hearing. The report of the presiding officer and the transcript of the public hearing and evidence submitted thereat shall in such cases be fully considered by the initial action authority in making his decision or recommendation to higher authority as to such permit action or Federal project.

§ 327.10 Authority of the presiding officer.

Presiding officers shall have the following authority:

(a) To regulate the course of the hearing including the order of all sessions and the scheduling thereof, after any initial session, and the recessing, reconvening, and adjournment thereof; and

(b) To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authority under which the Chief of Engineers functions, and with the policies and directives of the Chief of Engineers and the Secretary of the Army.

§ 327.11 Public notice.

(a) Public notice shall be given of any public hearing to be held pursuant to this regulation. Such notice should normally provide for a period of not less than 30 days following the date of public notice during which time interested parties may prepare themselves for the hearing. Notice shall also be given to all Federal agencies affected by the proposed action, and to state and local agencies and other parties having an interest in the subject matter of the hearing. Notice shall be sent to all persons requesting a hearing and shall be posted in appropriate government buildings and provided to newspapers of general circulation for publication. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition.

(b) The notice shall contain time, place, and nature of hearing; the legal authority and jurisdiction under which the hearing is held; and location of and availability of the draft environmental impact statement or environmental assessment.

PART 328—DEFINITION OF WATERS OF THE UNITED STATES

Sec.

328.1 Purpose.
328.2 General scope.
328.3 Definitions.
328.4 Limits of jurisdiction.
328.5 Changes in limits of waters of the United States.

Authority: 33 U.S.C. 1344.

§ 328.1 Purpose.

This section defines the term "waters of the United States" as it applies to the jurisdictional limits of the authority of the Corps of Engineers under the Clean Water Act. It prescribes the policy, practice, and procedures to be used in determining the extent of jurisdiction of the Corps of Engineers concerning "waters of the United States." The terminology used by section 404 of the Clean Water Act includes "navigable waters" which is defined at section 502(7) of the Act as "waters of the United States including the territorial seas." To provide clarity and to avoid confusion with other Corps of Engineer regulatory programs, the term "waters of the United States" is used throughout 33 CFR Parts 320–330. This section does not apply to authorities under the Rivers and Harbors Act of 1899 except that some of the same waters may be regulated under both statutes (see 33 CFR Parts 322 and 329).

§ 328.2 General scope.

Waters of the United States include those waters listed in § 328.3(a). The lateral limits of jurisdiction in those waters may be divided into three categories. The categories include the territorial seas, tidal waters, and non-tidal waters (see 33 CFR 328.4 (a), (b), and (c), respectively).

§ 328.3 Definitions.

For the purpose of this regulation these terms are defined as follows:

(a) The term "waters of the United States" means

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) All interstate waters including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) Which are used or could be used for industrial purpose by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as waters of the United States under the definition;

(5) Tributaries of waters identified in paragraphs (a) (1)–(4) of this section;

(6) The territorial seas;

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1)–(6) of this section.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

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SUMMARY OF SELECTED ENVIRONMENTAL LEGISLATION

LEGISLATIVE REFERENCE	REGULATIONS REFERENCE	PURPOSE	APPLICABILITY	GENERAL PROCEDURES	AGENCY FOR COORDINATION AND CONSULTATION
GENERAL ENVIRONMENTAL STATUTES					
4. Public Hearings: 23 U.S.C. 128	23 CFR 771.111	To ensure adequate opportunity for public hearing(s) on the effects of alternative project locations and major design features; as well as the consistency of the project with local planning goals and objectives.	Public hearings or hearing opportunities are required for projects described in each State's FHWA-approved public involvement procedures.	Public hearings or opportunities for public hearings during the consideration of highway location and design proposals are conducted as described in the State's FHWA-approved, public involvement procedures. States must certify to FHWA that such hearings or the opportunity therefor have been held and must submit a hearing transcript to FHWA.	Appropriate Federal State, and local agencies

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and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in § 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

§ 1508.5 Cooperating agency.

"Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in § 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

§ 1508.6 Council.

"Council" means the Council on Environmental Quality established by Title II of the Act.

§ 1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

§ 1508.8 Effects.

"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

§ 1508.9 Environmental assessment.

"Environmental assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

§ 1508.10 Environmental document.

"Environmental document" includes the documents specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant

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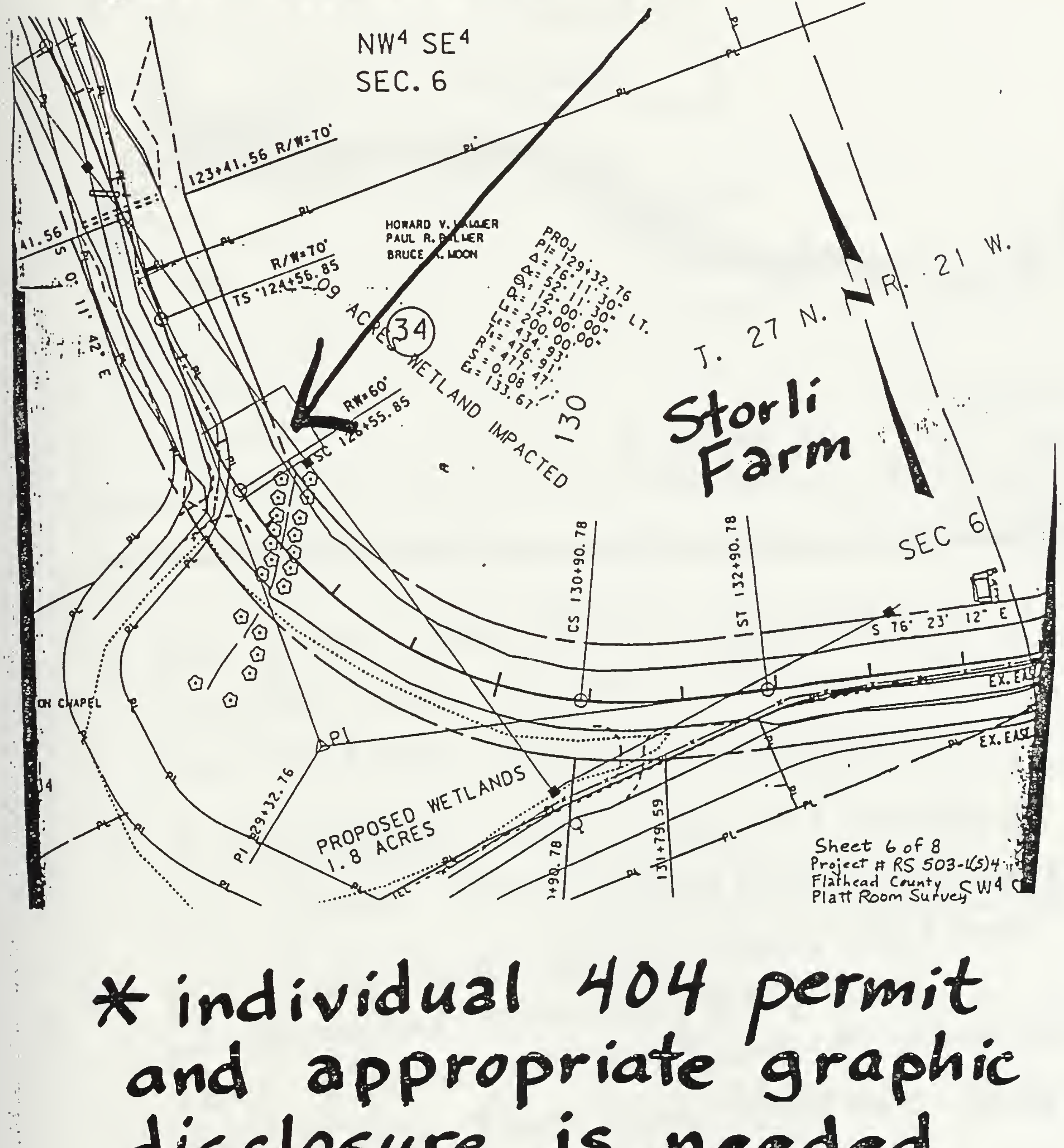
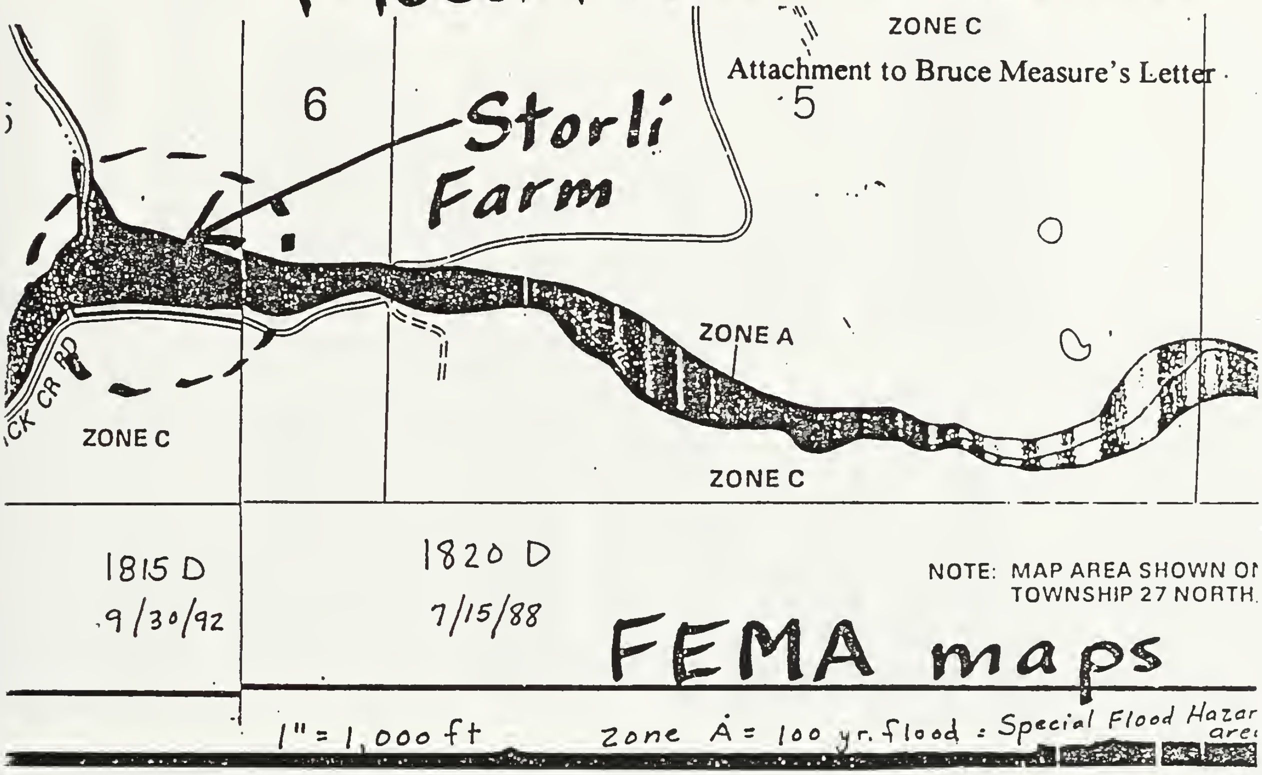
EA does not disclose important stream confluence area



* individual 404 permit and appropriate graphic disclosure is needed for the stream confluence and wetland #3 area.

Avoidance Alternative For Storli Farm Flood Plain Needed



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* EA does not show proposal's impact on Birch & Patrick Crk. Confluence (on Storli Farm).

* Individual 404 permit needed for Storli Farm floodplain/wetland #3.

* EA does not show cross sections of elevated roadway proposed thru the core of Zone A floodplain and thru the confluence area.

Public Hearing 23 USC 128

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Federal Highway Administration, Department of Transportation—Truck size and weight, route designations-length, width and weight limitations, 23 CFR Part 658.

CROSS REFERENCES

This section is referred to in 23 USCS § 141.

RESEARCH GUIDE

Am Jur:
7A Am Jur 2d, Automobiles § 196.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Effect of particular state laws

1. Generally

Secretary of Transportation lacked statutory authority to issue new truck size policy which added almost 3000 miles of highways which state had declined to designate as qualifying under Department of Transportation and Related Agencies Appropriations Act for 1983 (23 USCS § 127 note) and Surface Transportation Assistance Act of 1982 (49 USCS § 2311). Georgia Dep't of Transp. v Dole (1983, ND Ga) 561 F Supp 1024.

2. Effect of particular state laws

23 USCS § 127(a), which regulates weight limits on trucks using federal highways, does not expressly or impliedly preempt New York regulation of truck weights, where § 127(a) promotes uniform weight limitations not by prohibiting more restrictive local regulation, but merely by threatening loss of federal funds to states which do not permit trucks weighing up to 80,000 pounds to use federal highways within their borders, because Congress expressly contemplated existence of inconsistent local regulations. Ruiz v Commissioner of Dep't of Transp. (1988, SD NY) 679 F Supp 341, affd (1988, CA2 NY) 858 F2d 898.

Imposition by Minnesota of gross-weight registration tax on trucks which have been operated in excess of maximum weight allowed on highway still bears reasonable relation to highway use and does not constitute impermissible burden on interstate commerce. Anderson v Lappegaard (1974) 302 Minn 266, 224 NW2d 504.

In view of Montana laws in effect on July 1, 1956, state highway commission had authority to issue permits for either nonreducible or reducible loads without jeopardizing right of State of Montana to receive federal funds for highway purposes. State ex rel. Dick Irvin, Inc. v Anderson (1974) 164 Mont 513, 525 P2d 564.

State statute empowering state agency to issue permits which allow oversize and overweight vehicles to travel upon state's highway system must be read in conjunction with 23 USCS § 127; state statute granting state agency authority by issuing special permits to exceed statutory limitations when public interest will be served thereby was not interpreted to authorize agency to issue single permits which would allow multiple trips of overweight vehicles over interstate highway system of state, and agency was limited to issuance of single-trip permits. Bunch v Cobb (1979) 273 SC 445, 257 SE2d 225.

§ 128. Public hearings

(a) Any State highway department which submits plans for a Federal-aid highway project involving the bypassing of, or going through, any city, town, or village, either incorporated or unincorporated, shall certify to the Secretary that it has had public hearings, or has afforded the opportunity for such hearings, and has considered the economic and social effects of such a location, its impact on the environment, and its consistency with the goals and objectives of such urban planning as has been promulgated by the community. Any State highway department which submits plans for an Interstate System project shall certify to the Secretary that it has had public hearings at a convenient location, or has afforded the opportunity for such hearings, for the purpose of enabling persons in rural areas through or contiguous to whose property the highway will pass to express any objections they may have to the proposed location of such highway. Such certification shall be accompanied by a report which indicates the consideration given to the economic, social, environmental, and other effects of the plan or highway location or design and various alternatives which were raised during the hearing or which were otherwise considered.

(b) When hearings have been held under subsection (a), the State highway department shall submit a copy of the transcript of said hearings to the Secretary, together with the certification and report.

(Aug. 27, 1958, P. L. 85-767, § 1, 72 Stat. 902; Aug. 23, 1968, P. L. 90-495, § 24, 82 Stat. 828; Dec. 31, 1970, P. L. 91-605, Title I, § 135, 84 Stat. 1734.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1968. Act Aug. 23, 1968 (effective on enactment on 8/23/68, as provided by § 37 of such Act which appears as 23 USCS § 101 note), in subsec. (a), inserted "and social effects of such a location, its impact on the environment, and its consistency with the goals and objectives of such urban planning as has been promulgated by the community." for "effects of such a location.".

1970. Act Dec. 31, 1970, in subsec. (a), added the sentence beginning "Such certificate . . . ."; and in subsec. (b), added "and report".

CODE OF FEDERAL REGULATIONS

Federal Highway Administration, Department of Transportation—Construction and maintenance, 23 CFR Part 635.

Federal Highway Administration, Department of Transportation—Environmental impact and related procedures, 23 CFR Part 771.

RESEARCH GUIDE

Federal Procedure L Ed:
18 Fed Proc L Ed, Highways and Bridges § 43:9.

INTERPRETIVE NOTES AND DECISIONS

I. IN GENERAL

1. Generally
2. Constitutional issues
3. Purpose
4. Relationship with other federal laws
5. Relationship with state laws
6. Retroactive effect

II. HEARINGS AND REPORTS

7. Generally
8. Notice
9. Time of hearings
10. Rehearing requirements
11. Environmental impact statement requirements

III. JUDICIAL REVIEW

12. Generally
13. Jurisdiction
14. Standing
15. Laches
16. Injunctive relief
17. Summary judgment
18. Res judicata and collateral estoppel
19. Award of costs

I. IN GENERAL

1. Generally

The transcript requirement is satisfied by submission of complete tape recording of public hearing. Arlington Coalition on Transp. v Volpe (1971, ED Va) 332 F Supp 1218, 3 Envt Rep Cas 1138, 1 ELR 20486, revd on other grounds (1972, CA4 Va) 458 F2d 1323, 3 Envt Rep Cas 1995, 2 ELR 20162, cert den (1972) 409 US 1000, 34 L Ed 2d 261, 93 S Ct 312, 4 Envt Rep Cas 1752.

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Corridor and design public hearings are appropriate under 1969 change in PPM 20-8 where there is non-compliance with pre-1969 hearing requirements. Ward v Ackroyd (1972, DC Md) 344 F Supp 1202, 4 Envt Rep Cas 1209, 2 ELR 20405.

Hearing, with respect to bypass location of federal interstate highway fully covered social effects of proposed bypass location, its impact on environment and its consistency with community's urban planning objectives and goals; brevity in expression of administrative decision is not fatal and inquiry into mental processes of administrative decision makers is usually to be avoided. Fayetteville Area Chamber of Commerce v Volpe (1974, ED NC) 386 F Supp 572, 6 Envt Rep Cas 1891, affd (1975, CA4 NC) 515 F2d 1021, 7 Envt Rep Cas 1953, 5 ELR 20379, cert den (1975) 423 US 912, 46 L Ed 2d 140, 96 S Ct 216, 8 Envt Rep Cas 1400.

Public hearing held by state agency on route and design of proposed interstate connector is sufficient under 23 USCS § 128 where notwithstanding stated preference by agency for one route at time of hearing, hearing was held one month after completion of draft environmental impact statement, statement foreclosed only one of three possible routes, and public allowed fully to air its views at hearing. Fenton v Dole (1986, ND NY) 636 F Supp 557, affd (1986, CA2 NY) 792 F2d 44.

2. Constitutional issues

Section 23 of the Federal-Aid Highway Act of 1968 providing for the construction of highways in the District of Columbia, did not eliminate the necessity of compliance with 23 USCS § 128(a) since to do so would deny district residents important personal rights granted citizens elsewhere in the United States and thus constitute the invidious discrimination prohibited by the equal protection clause of the Constitution. D. C. Federation of Civic Asso. v Volpe (1970) 140 US App DC 162, 434 F2d 436, 1 ELR 20539.

3. Purpose

Firm commitment to location Congress generally envisioned as condition precedent to advance acquisitions can be made only after hearing considering alternatives to that location has been held; by allowing advance acquisition without prior hearings whenever protective buying or hardship buying is object, Federal Highway Administration has effectively drafted exception from requirements of § 128 whenever advance acquisition authority is exercised, where no such broad exclusion was suggested on face of statute or in accompanying expression of Congressional intent. National Wildlife Federation v Snow (1976) 182 US App DC 229, 561 F2d 227, 7 ELR 20022, 41 ALR Fed 905.

Major focus of hearing under 23 USCS § 128(a) must be on impact of project as whole; purpose of hearings required by provision is to afford full opportunity for effective public participation in consideration of highway location and design approvals, and to give all interested persons opportunity to become fully acquainted with highway proposals of concern to them; before hearing under § 128, environmental impact statement must be made available to public so that views based on accurate and complete environmental information may be expressed by participants, such statement is to include full study and analysis of environmental effects of proposed bighway interchange and of development potential that it would create. Davis v Coleman (1975, CA9 Cal) 521 F2d 661, 8 Envt Rep Cas 1259, 5 ELR 20633.

23 USCS § 128 and regulations promulgated thereto are directed less at matter of environmental disclosure than toward need for public input into decisionmaking process. Swain v Brinegar (1974, SD Ill) 378 F Supp 753, 6 Envt Rep Cas 2067, 4 ELR 20836, revd on other grounds (1975, CA7 Ill) 517 F2d 766, 7 Envt Rep Cas 2046, 21 FR Serv 2d 169, 5 ELR 20354.

4. Relationship with other federal laws

Defendants violate 42 USCS § 4332(a)(C) and (2)(D) and 23 USCS § 128(a) by not providing public forum at which NEPA required environmental impact statement is basis for hearing. Rankin v Coleman (1975, ED NC) 394 F Supp 647, 5 ELR 20626, mod on other grounds (1975, ED NC) 401 F Supp 664, 8 Envt Rep Cas 1522.

Separate corridor and design hearings need not be held in all cases concerned with highway widening project, only in cases provided for in 23 CFR § 790.5(a). Stephens v Adams (1979, ED Wis) 469 F Supp 1222, 13 Envt Rep Cas 1031, 9 ELR 20624.

Hearing provisions of 23 USCS § 128 and 23 CFR § 790.5—with their specific criteria for various kinds of hearings—are mandatory, but unless proposed project involves (1) new location, (2) substantially different social, economic or environmental effects, or (3) changes in layout or function of connecting roads, combined corridor and design hearing is sufficient under state action plan without reference to whether action was determined to be "major" or "non-major" under another part of plan; provision of state action plan permitting single combined corridor and design hearing is consistent with federal regulation it replaced. Barnes v State (1979) 132 Vt 230, 403 A2d 684.

5. Relationship with state laws

Failure of state to comply with requirements of 23 USCS § 128(a) in exercising its power of eminent domain merely means that its right to federal funds may be questioned, but its right to proceed within its own borders under its own laws without

federal funding is not impaired by non-compliance with this statute. County Highway Com. v Smith (1969) 61 Tenn App 292, 454 SW2d 124.

6. Retroactive effect

Whether 1968 amendment requiring social and ecological impact consideration at public hearings regarding proposed highway location plans, in addition to former requirement of economic impact analysis, should be applied to projects ongoing at effective date of amendment depends on whether or not project has reached stage of completion at which costs of altering or abandoning proposed location would outweigh whatever benefits might be derived from consideration of additional factors. Fayetteville Area Chamber of Commerce v Volpe (1972, CA4 NC) 463 F2d 402, 4 Envt Rep Cas 1503, 2 ELR 20504.

23 USCS § 128(a) and policy and procedural memorandum issued by Department of Transportation construing statute (PPM 20-8) do not apply retroactively to projects which received federal design approval or its equivalent prior to the passage of either provision. Hopewell Township Citizens I-95 Comm. v Volpe (1973, CA3 NJ) 482 F2d 376, 3 ELR 20693 (disapproved as stated in Metzker v International Paper Co. (1993, DC Del) 825 F Supp 641).

Phrase "the fullest extent possible" in 42 USCS § 4332(1) indicates intent to apply National Environmental Policy Act's standards to on going projects, with result that new public hearings pursuant to 23 USCS § 128(a) may be required even though they arose from projects or programs initiated prior to enactment of National Environmental Policy Act (January 1, 1970): thus although state highway department held two public hearings concerning portion of interstate highway pursuant to 23 USCS § 128(a) as statute then read, and inasmuch as state department of highway still has to apply to Federal Highway Administration for approval of project's plans, specifications, and estimates, state highway department, prior to applying for such approval, must hold another hearing complying 23 USCS § 128(a) as it now reads and as it may be affected by National Environmental Policy Act (42 USCS §§ 4321 et seq.). Lathan v Brinegar (1974, CA9 Wash) 506 F2d 677, 7 Envt Rep Cas 1048, 4 ELR 20802.

There is nothing in the language of 23 USCS § 128(a) to justify plaintiff's contention that Congress intended it to be retroactive nor does that language support plaintiff's contention that the elements and factors introduced by this section "must be met whether or not public hearings are ever held under the terms of the amendment. Elliot v Volpe (1971, DC Mass) 328 F Supp 831, 2 Envt Rep Cas 1498, 1 ELR 20243.

Whether hearing held January 23, 1969, regarding proposed completion of section of freeway was improperly conducted can not be determined by Department of Transportation regulation which became effective 6 days after hearing. Citizens for Mass Transit against Freeways v Brinegar (1973, DC Ariz) 357 F Supp 1269, 5 Envt Rep Cas 1231, 3 ELR 20747.

II. HEARINGS AND REPORTS

7. Generally

Individual "project" may consist of all work on entire highway or merely right of way acquisition for interchange. Lathan v Brinegar (1974, CA9 Wash) 506 F2d 677, 7 Envt Rep Cas 1048, 4 ELR 20802.

Federal funding of state and local planning processes and agencies in state is not sufficient as matter of law [illegible] cably brand proposed highway a "federal-aid highway project" within meaning of 23 USCS § 128. Hill v Coleman (1975, DC Del) 399 F Supp 194, 8 Envt Rep Cas 1177, 6 ELR 20001.

Project is not federal action or federal-aid highway project for purposes of 23 USCS §§ 101(a), 103, 109(h), and 128 despite location approval by appropriate federal officials and their approval of design for approaches to bridge where no federal aid has been sought, programmed or authorized for preliminary engineering, right-of-way or construction, state has already incurred substantial costs of project, and it is within state's financial capacity to finance bridge project completely. Citizens Civic Ass'n v Coleman (1976, WD Wis) 417 F Supp 975, 9 Envt Rep Cas 1622, 6 ELR 20668.

8. Notice

Notice of proposed highway relocation afforded by state in compliance with Department of Transportation regulations for "corridor public hearing," which was not held in absence of requests therefor, sufficiently discharges Secretary's duties under 23 USCS § 128 and 49 USCS § 1651 in passing on state application for federal construction funds. Pennsylvania Environmental Council, Inc. v Bartlett (1971, CA3 Pa) 454 F2d 613, 3 Envt Rep Cas 1421, 1 ELR 20622.

To satisfy notice and hearing requirements of § 128(a), description of project need not be so specific as to inform each individual property owner that his or her property will be affected; but notice given must be specific enough to put public on notice of (1) project's general bounds and (2) agency's method of achieving aims of project. Citizen Advocates for Responsible Expansion (I-CARE) v Dole (1985, CA5 Tex) 770 F2d 423, 23 Envt Rep Cas 1239, 15 ELR 20967, reh den, en banc (1985, CA5 Tex) 777 F2d 701.

Texas State Department of Highways and Public Transportation failed to satisfy § 128(a) notice and hearing requirements with respect to proposed

Attachment to Bruce Measure's Letter

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expansion of segment of interstate highway in downtown municipality, where (1) no notice was ever given nor public hearing held regarding plans, (2) it was first announced publicly that project was part of another highway project at public hearing on latter project, and (3) notice of latter meeting did not mention project in question. Citizen Advocates for Responsible Expansion (I-CARE) v Dole (1985, CA5 Tex) 770 F2d 423, 23 Envt Rep Cas 1239, 15 ELR 20967, reh den, en banc (1985, CA5 Tex) 777 F2d 701.

Section 128 does not embody good-faith but careless exception to explicit notice and hearing requirements of such section and implementing regulations. Citizen Advocates for Responsible Expansion (I-CARE) v Dole (1985, CA5 Tex) 770 F2d 423, 23 Envt Rep Cas 1239, 15 ELR 20967, reh den, en banc (1985, CA5 Tex) 777 F2d 701.

Failure of newspaper notice of public hearing to advise of the right to submit written statements, and malfunctioning of transcribing equipment so that some statements at hearing were not included in transcript was harmless error and therefore did not void final approval of Secretary of Transportation where all persons who appeared and whose oral statements were not transcribed were advised by certified mail that they could file a statement. Citizens to Preserve Overton Park, Inc. v Volpe (1970, WD Tenn) 309 F Supp 1189, affd (1970, CA6 Tenn) 432 F2d 1307, 1 Envt Rep Cas 1685, 1 ELR 20053, revd on other grounds (1971) 401 US 402, 28 L Ed 2d 136, 91 S Ct 814, 2 Envt Rep Cas 1250, 1 ELR 20110 (ovrld on other grounds as stated in Nanayakkara v Secretary, United States Dep't of Hous. & Urban Dev. (1993, ED Pa) 1993 US Dist LEXIS 12022) and (ovrld on other grounds as stated in Conservation Law Found. v Burke (1993, Vt) 1993 Vt LEXIS 190).

Failure to officially give notice of hearing regarding proposed completion of section of freeway for 2 successive weeks prior to hearing is insubstantial error in view of (1) many newspaper articles published prior to hearing, (2) large attendance at hearing, (3) affidavit showing that hearing administrator at time of hearing had no knowledge of Department of Transportation regulation requiring notice for 2 successive weeks, (4) lack of any showing of how effective version of Department of Transportation regulation was substantially violated, and (5) unrefuted affidavit indicating compliance with substance of 28 USCS § 128. Citizens for Mass Transit against Freeways v Brinegar (1973, DC Ariz) 357 F Supp 1269, 5 Envt Rep Cas 1231, 3 ELR 20747.

Department of Transportation substantially complied with 23 USCS § 128(a) when planning widening of interstate highway where (1) notice was not given to public of "informational meeting" on project, (2) documents concerning project were made available to public prior to public hearing and were not misleading, (3) meaningful consideration was given to public criticism of project, notwithstanding that detailed study was narrowed to no-build alternative and selected alternate prior to public hearing, and (4) no additional public hearing was held on insubstantial and insignificant realignment shift. Coalition on Sensible Transp., Inc. v Dole (1986, DC Dist Col) 642 F Supp 573, affd (1987) 263 US App DC 426, 826 F2d 60, 17 ELR 21191, 8 FR Serv 3d 1044.

Notice of hearing was not fatally defective because it failed to state that at the public hearing consideration would be given to the economic effects of the location of a freeway. Linnecke v Department of Highways (1960) 76 Nev 26, 348 P2d 235.

To hold that commonwealth's publicity about eminence of condemnation caused property owner to lose tenants at such rate that rental income is no longer sufficient to cover taxes on property constitutes de facto taking does not "fly in the face" of requirements that there be advance notice and hearings at which affected property owners will have opportunity to be heard before public improvement, such as highway, is approved. Conroy—Prugh Glass Co. v Commonwealth, Dep't of Transp. (1974) 456 Pa 384, 321 A2d 598.

Plaintiffs do not have right to personal notice, as distinguished from public notice, of public project having potential environmental impact simply because they own real property that may be condemned in execution of public project; proper notice of opportunity for hearings prescribed by 23 USCS § 128 is afforded public and landowners potentially affected by public improvement project through notice in newspapers of general circulation in area, and this does not constitute denial of due process. In re Condemnation by Commonwealth, Dep't of Transp., etc. (1975) 22 Pa Cmwlth 440, 349 A2d 819.

9. Time of hearings

Under 23 USCS § 128(a) and policy and procedure memorandum issued by Department of Transportation (PPM 20-8), design public hearing must precede federal design approval of federal aid highway projects involving interstate highways. Hopewell Township Citizens I-95 Comm. v Volpe (1973, CA3 NJ) 482 F2d 376, 3 ELR 20693.

Public hearings on proposed highway project need not be held before systems planning phase is closed; proper issue is whether public hearings are conducted to assure consideration of social, economic, and environmental impacts, at point that is meaningful; thus, planners are permitted to have specific proposal and even to be promoting it; but planners are not permitted to have closed their minds to social, economic, and environmental impacts, and if such impacts are excessive, they must be willing to reconsider project. Coalition of Concerned Citizens against I-670 v Damian (1984, SD Ohio) 608 F Supp 110.

Car dealer losing one-third of his display space to proposed highway alteration project is not entitled to injunctive relief, where sufficiently noticed public hearing seeking local input on project was held, because meeting held after project had been submitted to FHA for approval but before federal money had been authorized complied with 23 USCS § 128(a). Fred W. Smith, Inc. v Burnley (1990, DC RI) 733 F Supp 509.

10. Rehearing requirements

Project changes made after a § 128 hearing require a new hearing only if those changes are substantial or significant and no new hearing was required where a shift moved highway closer to nursing home, some churches and industrial area, but away from some residential areas, and record disclosed that noise levels would be affected only slightly. Coalition on Sensible Transp., Inc. v Dole (1987) 263 US App DC 426, 826 F2d 60, 17 ELR 21191, 8 FR Serv 3d 1044.

When, subsequent to public hearing in respect to route of freeway through park, but before any public moneys had been allocated, statute is amended to require new additional matters to be considered in connection with the route, another public hearing is required. Monroe County Conservation Council, Inc. v Volpe (1972, CA2 NY) 472 F2d 693, 4 Envt Rep Cas 1886, 3 ELR 20006.

There does not have to be new hearing pursuant to 23 USCS § 128(a) everytime state highway department submits some change in plans to Secretary, but additional hearings need to be held with respect to major submissions; repeated § 128(a) hearings are not required in any case in which a hearing, fully complying with § 128(a) and policies of National Environmental Policy Act, has once been held, at least in absence some of real drastic changes in plans occurring thereafter. Lathan v Brinegar (1974, CA9 Wash) 506 F2d 677, 7 Envt Rep Cas 1048, 4 ELR 20802.

Plaintiff's claim that new public hearings are required on highway construction project, in light of amendment to 23 USCS § 128(a) requiring hearings to consider social and environmental effects of planned projects and enactment of implementing regulation requiring location hearing prior to location approval and design hearing prior to design approval, both of which have been held to apply to ongoing projects, necessitates remand to district court for certain determinations involving whether design approval has been given by government, and what constitutes "final design approval;" if district court determines that final design approval was not given prior to date of enactment of implementing regulation, but that request for final design approval was made within three years of original hearing, it must find engineer's certification that original hearing dealt with major design requirements was reasonable; if court determines that any change in location or design would have substantially different social, economic or environmental effect, new hearing must be held. Louisiana Environmental Soc. v Coleman (1976, CA5 La) 537 F2d 79, 9 Envt Rep Cas 1245, 6 ELR 20710, reh den (1976, CA5 La) 540 F2d 1085.

When public hearing conducted by state prior to the application for federal highway funds gave only minimal consideration to the affect of freeway on noise and air pollution, further hearing will be ordered to focus on those features. Keith v Volpe (1972, CD Cal) 352 F Supp 1324, 4 Envt Rep Cas 1350, 2 ELR 20425, affd (1974, CA9 Cal) 506 F2d 696, 4 ELR 20809, cert den (1975) 420 US 908, 42 L Ed 2d 837, 95 S Ct 826.

National Environmental Policy Act does not require additional location hearing under 23 USCS § 128(a) where original location approval of particular highway in interstate system in 1965 was then legally valid. Movement against Destruction v Volpe (1973, DC Md) 361 F Supp 1360, 5 Envt Rep Cas 1625, 3 ELR 20667, af'd (1974, CA4 Md) 500 F2d 29, 4 ELR 20278.

In action by plaintiffs to permanently enjoin Illinois and federal highway officials from taking further steps toward acquisition of right of way or construction of proposed federal aid highway, there is no merit to plaintiffs' contention that new corridor hearing should be required on theory that previous hearing was rendered nullity by decision of Illinois Supreme Court holding that Illinois Trust Authority Act is unconstitutional; validity of corridor hearing is in no way related to validity of state highway act in effect at time of hearing, but is dependent only upon 23 USCS § 128. Swain v Brinegar (1974, SD Ill) 378 F Supp 753, 6 Envt Rep Cas 2067, 4 ELR 20836, revd on other grounds (1975, CA7 Ill) 517 F2d 766, 7 Envt Rep Cas 2046, 21 FR Serv 2d 169, 5 ELR 20354.

11. Environmental impact statement requirements

23 USCS § 128(a) relating to consideration and discussion of alternatives is subject to construction of reasonableness; so long as there are unexplored and undiscussed alternatives that inventive minds can suggest, without rule or reason, it would be technically impossible to prepare literally correct environmental impact statement and literally impossible for state highway department to report, in compliance with 23 USCS § 128(a), final decision on route of federal highway to federal authorities; moreover, claim that federal and state co-operation in preparation of environmental impact statement is impermissible delegation of authority on part of Federal Highway Administrator is not well taken. Fayetteville Area Chamber of Commerce v Volpe (1975, CA4 NC) 515 F2d 1021, 7 Envt Rep Cas 1953, 5 ELR 20379, cert den (1975) 423 US 912, 46 L Ed 2d 140, 96 S Ct 216, 8 Envt Rep Cas 1400.

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In order to insure effect of public participation required by 23 USCS § 128 it is now necessary that corridor report with respect to federal aid highway project fully reveal contents of studies, alternative studies, and principal features and effects of recommended route. Swain v Brinegar (1974, SD Ill) 378 F Supp 753, 6 Envt Rep Cas 2067, 4 ELR 20836, revd on other grounds (1975, CA7 Ill) 517 F2d 766, 7 Envt Rep Cas 2046, 21 FR Serv 2d 169, 5 ELR 20354.

23 USCS § 128 is designed to make public aware and cognizant of possible environmental harm inherent to any highway construction; defendants, at any future hearings on construction, must make public aware of impact that such construction will have on further highway construction since, if highway project is artificially segmented so that public is unaware of possible overall impact, broad purpose of 23 USCS § 128 is defeated. No East-West Highway Committee, Inc. v Whitaker (1975, DC NH) 403 F Supp 260, 6 ELR 20053.

Stipulation and order providing that state defendants must prepare environmental impact statement and environmental impact report complying with provisions of NEPA and California Environmental Quality Act respectively, that public hearings must be held in compliance with 23 USCS § 128, and enjoining state defendants from undertaking certain construction, right-of-way acquisition and other activities in connection with uncompleted portion of freeway during period of time necessary to comply with these laws, is properly modified to permit construction on enjoined segment where such construction is in public interest and justified by balancing of equities involved. South Pasadena v Volpe (1976, CD Cal) 418 F Supp 854, 9 Envt Rep Cas 1580, amd on other grounds (1976, CD Cal) 424 F Supp 626.

III. JUDICIAL REVIEW

12. Generally

In order to determine whether there has been compliance with requirements of 23 USCS § 128, court is not empowered to substitute its judgment for that of state or federal highway authorities; rather review is for limited purpose of determining whether responsible officials acted with full, good faith consideration of all legal obligations and whether actual balance of costs and benefits struck by officials was arbitrary or clearly gave insufficient weight to environmental factors. Swain v Brinegar (1974, SD Ill) 378 F Supp 753, 6 Envt Rep Cas 2067, 4 ELR 20836, revd on other grounds (1975, CA7 Ill) 517 F2d 766, 7 Envt Rep Cas 2046, 21 FR Serv 2d 169, 5 ELR 20354.

In action to permanently enjoin Illinois and federal highway officials from taking further steps toward acquisition of right of way or construction of proposed federal aid highway, there is no merit to plaintiff's contention that corridor report devoted greater attention to social and economic effects of project than to its environmental effect, inasmuch as social and economic effect may reasonably be said to predominate, and lack of attention given environmental effect may well be due to relatively slight environmental consequences of project. Swain v Brinegar (1974, SD Ill) 378 F Supp 753, 6 Envt Rep Cas 2067, 4 ELR 20836, revd on other grounds (1975, CA7 Ill) 517 F2d 766, 7 Envt Rep Cas 2046, 21 FR Serv 2d 169, 5 ELR 20354.

13. Jurisdiction

In action brought by nonprofit corporation and contributing member against various state and city defendants as well as two United States defendants challenging proposed construction of limited access expressway, jurisdiction over United States defendants is conferred by Administrative Procedure Act (5 USCS § 702); such jurisdiction also extends to nonfederal defendants who allegedly took advantage of benefits conferred by federal laws and whose activities could otherwise make "sham" of federal statutory requirements. River v Richmond Metro. Authority (1973, ED Va) 359 F Supp 611, 5 Envt Rep Cas 1353, 3 ELR 20556, affd (1973, CA4 Va) 481 F2d 1280.

Court has no jurisdiction over action seeking injunction against proposed bridge construction project on basis of alleged violations of federal statutes and regulations dealing with environmental considerations since plaintiff fails to show extremely strong probability that federal funds will be applied for by state, and that application will be approved; bridge project is not federal action or federal-aid highway project for purposes of 23 USCS §§ 101(a), 103, 109(h), and 128 despite location approval by appropriate federal officials and their approval of design for approaches to bridge where no federal aid has been sought, programmed or authorized for preliminary engineering, right-of-way or construction, state has already incurred substantial costs of project, and it is within state's financial capacity to finance bridge project completely. Citizens Civic Ass'o v Coleman (1976, WD Wis) 417 F Supp 975, 9 Envt Rep Cas 1622, 6 ELR 20668.

14. Standing

User and enjoyer of resources, allegedly protected by 23 USCS §§ 128, 134, and 138, and 49 USCS § 1653(f), is within zone of protection of such statutes thus giving him standing to challenge highway construction. River v Richmond Metro. Authority (1973, ED Va) 359 F Supp 611, 5 Envt Rep Cas 1353, 3 ELR 20556, affd (1973, CA4 Va) 481 F2d 1280.

Individual claiming that government officials violated regulations promulgated under Federal-Aid Highway Act (23 USCS §§ 101 et seq.) in

planning and developing interstate highway extension has standing to bring action to enjoin construction, where individual's house is 360 feet from proposed location of extension and individual testified that extension would cause loss of valuation of his property and loss to him in terms of aesthetic value he places upon his community. Coalition of Concerned Citizens against I-670 v Damian (1984, SD Ohio) 608 F Supp 110.

15. Laches

Plaintiffs, as matter of law, are estopped by laches to assert invalidity of hearings held in 1960 and 1965 concerning proposed highway project by complaint filed at least 5 years after hearings occurred. Citizens for Mass Transit against Freeways v Brinegar (1973, DC Ariz) 357 F Supp 1269, 5 Envt Rep Cas 1231, 3 ELR 20747.

Where years before either 23 USCS § 128 or 42 USCS § 4321 became effective, plaintiff community association had actual notice of planning of particular freeway project, but refrained until August 23, 1973 from any legal action asserting violation of either statute or attempting to compel compliance with either statute, delay in filing is unreasonable. Centerview/Glen Avalon Homeowners Asso. v Brinegar (1973, CD Cal) 367 F Supp 633, 6 Envt Rep Cas 1201.

In class action suit to permanently enjoin federal, state, and city governments from constructing interstate highway through park, defense of laches can not be urged, considering the date of enactment of the statutes granting the right to sue, date of Secretary of Transportation's determinations, date of award of contract, and date of beginning of construction. Harrisburg Coalition against Ruining Environment v Volpe (1971, MD Pa) 330 F Supp 918, 2 Envt Rep Cas 1671, 1 ELR 20237.

16. Injunctive relief

Without deciding whether 1968 public hearing was inadequate under predecessor to 23 USCS § 128 as a matter of law, Court of Appeals stated that injunctive relief, either in the nature of ordering a new location hearing or halting construction until a new hearing was held, would not effectuate rights or protect the interests of persons displaced by an interstate highway project where they had been relocated and their homes demolished, commitments had been entered into by the local, state and federal governments among themselves and third parties, and construction was already proceeding. Concerned Citizens for Preservation of Clarksville v Volpe (1971, CA5 Tex) 445 F2d 486, 1 ELR 20318.

District Court does not err in enjoining further work on interstate freeway in California until additional public hearing is held under 23 USCS § 128(a) as amended. Keith v California Highway Com. (1974, CA9 Cal) 506 F2d 696, 4 ELR 20809, cert den (1975) 420 US 908, 42 L Ed 2d 837, 95 S Ct 826.

Petition to preliminarily enjoin highway project to eliminate dangerous traffic conditions, on claim that project violates, among others, 23 USCS §§ 128 and 138 in that proper hearings were not held, proper impact statement was not filed, and no determination was made that there was no reasonable alternative to use of so-called park land (which construction would allegedly destroy), is denied, where project is substantially completed, any adverse effect upon environment appears to be negligible, compared with obvious needs for correcting dangerous highway intersection, and where possibility of petitioners success on merits is at best uncertain and problematical. Public Interest Research Group (PIRGIM) v Brinegar (1975, CA6 Mich) 517 F2d 917, 5 ELR 20502.

Requirements of 23 USCS §§ 128 and 138 and of 49 USCS § 1653(f) apply to highway construction projects having received federal location approval, and injunction will issue halting further construction until compliance therewith. La Raza Unida v Volpe (1971, ND Cal) 337 F Supp 221, 3 Envt Rep Cas 1306, 1 ELR 20642, cert den (1972) 409 US 890, 34 L Ed 2d 147, 93 S Ct 105 and affd (1973, CA9 Cal) 488 F2d 559, 4 ELR 20090, cert den (1974) 417 US 968, 41 L Ed 2d 1138, 94 S Ct 3171.

Plaintiffs are entitled to permanent injunction enjoining corridor public hearings concerning location of approach roads to proposed bridge over Long Island Sound between Rye, New York, and Oyster Bay, New York until defendants comply with substantive and procedural requirements of 23 USCS § 128. Rye v Schuler (1973, SD NY) 355 F Supp 17, 16 FR Serv 2d 1511, 3 ELR 20427.

Construction project involving improvements to segment of road will not be preliminarily enjoined, in view of absence of showing plaintiffs probable success on merits, in that there is no requirement, under 23 USCS § 128, contrary to plaintiffs' contention, for formal environmental, social or economic studies; moreover exhibit submitted by defendants, which purports to be location and design study report required by § 123, shows that requisite consideration was given to potential adverse environmental, social and economic impact of project, contrary to allegations that such consideration was not made. Nodell Inv. Corp. v Colman (1975, ED Wis) 396 F Supp 1341.

Preliminary injunction enjoining defendants from proceeding in any way with proposed 5 lane highway due to alleged inadequacy of environmental impact statement and design public hearing will be modified to permit inception of simple 2 lane project, where existing environmental impact statement is found adequate and public hearing was sufficient for project of this sort; this is contingent

H. Comment sheet received at MDT on October 28, 1996, from Winnifred Storli (referencing letter from Winnifred Storli dated October 6, 1996)

1. The Biological Resource Report along with other background documents were summarized in the EA. There is no requirement to have these documents available at a public hearing. The BRR is available to the public upon request.
2. The County Commissioners would need to authorize the removal of Foy's Canyon Road from the Fiscal Year 1997 STIP program. The goal of the Statewide Transportation Improvement Program (STIP) is primarily twofold: to serve as a vehicle for soliciting public comment on the proposed three-year transportation plan (draft STIP) and to serve as a programming document (only projects listed in the final STIP are eligible for federal funding). This document, and the planning effort that goes into it, is mandated by federal law (23 USC 135). The document is a plan and therefore only tentative. Many factors are involved in bringing a transportation project to fruition; complications and delays with any one or more factors can set a project back substantially. What the STIP reflects is simply that the Department plans on letting this project to contract in Federal Fiscal Year 1997. This assumes that all previous activities comply with all applicable state and federal laws. If this does not occur, the Foy's Canyon project will not and cannot be let to contract in 1997. Therefore, the STIP is only able to be a tentative plan.
3. The Public Hearing for this project held on October 9, 1996, in Kalispell meets all federal regulations for a public hearing.
4. MDT has received your request for data source documents for accident rate and accident severity. Section 61-7-114, MCA is a state law requiring that certain information regarding accidents is not released to the public. The law specifically states that this information is to remain confidential. Therefore, your request for the data source documents cannot be fulfilled, by law. This information is, however, summarized in the EA in Section 2.3.
5. Highway signs are the responsibility of the County. Comparison of accident data was not done because this information was not considered necessary for the analysis.
6. The public workshops held on November 15, 1995, and February 7, 1996, were not public hearings. On October 9, 1996, a public hearing was conducted in Kalispell. A transcriber was present and a transcript of the hearing is included in Appendix A of this document.
7. MDT is not responsible for the draining of any wetlands in this project area. Any wetland draining occurring in this area is not part of this project.

RECEIVED
OCT 28 1996
ENVIRONMENTAL

#0733

Foy's Canyon Road

PUBLIC HEARING COMMENT SHEET

This comment sheet must be postmarked no later than October ~~18,~~ 25 1996.

I have the following comments or questions about the Foys Canyon Road Improvement project:

Send me a copy of "Biological Resourse Report Wetland Finding" document. Why wasn't it available for review at the public hearing? Why are the background documents being held as big secrets?

Remove Foys canyon Rd From FY 1997 STIP Program. It is NOT in construction phase! It is in environmental review process and likely will stay there for awhile because MDT did not provide adequate information and opportunity for a Real Public Hearing yet.

Enclose my attached letter to Ms Lostracco of Carter & Burgess into Hearing Transcript. Again, please supply me with data base/sources for Table 2-1 page 2-5 of your assessment. I do NOT ask for confidential reports. Please markout any private information, and send me the reports. Add enclosures to hearing transcript.

Name: Winnifred Storli

Address: POB 249, Kalispell, MT 59901

Phone: 755-4311

(above information is optional)

#0733

P.O. Box 249
Kalispell MT 59901
10.6.96

Attachment to Winnifred Storli's Comment Sheet

Dear Ms Lostracco,

Thank you for your letter of 9.30.96 which continues the trend of not answering questions. So for the record I will ask the most pertinent ones again and again and again.

① Please supply me with your data base and/or sources for Table 2-1 page 2-5 of your assessment. I do not ask for confidential accident reports.

② Comparison of accident rates for unmarked roads. Since 1980 on we have begged + pleaded for highway signs, even a stop sign at the Airport, Foys Canyon junction where the children gather. WHY are there no signs? Is this not negligent? or is it deliberate?

③ Why are public meetings not open public meetings with comments taped for the record? Is the November one going to be an Open House with coffee + cookies? Is this legal?

④ The wetlands at Airport road are being drained, the water channels changed + culverts put in. The ducks, heron, muskrat etc. gone as I write. Is this what the Highway Dept. is doing? Do we not have an impact statement?

Sincerely yours
Winnifred Storli
c/c Bruce Measure, State H'way Dept.

✓ Sent to MDT marshik
10-25-96 for Public
Hearing Transcript

Attachment to Winnifred Storli's Comment Sheet

Law Office of
AMBROSE G. MEASURE
33 Second Street East
Kalispell, Montana 59901

Mailing Address:
P.O. Box 918
Kalispell, MT 59903
Phone: (406) 752-6373
FAX: (406) 752-7168

Ambrose G. Measure
Bruce A. Measure
Attorneys at Law

VIA FACSIMILE TO: (406) 441-1375 AND U.S. MAIL
October 17, 1996

COPY

Army Corps of Engineers
Robert E. McInerney
Helena Regulatory Office
301 South Park, Drawer 10014
Helena, Montana 59626

Re: Reference #199690354/Foys Canyon Road Southwest of Kalispell

Dear Mr. McInerney:

Regarding the above matter, on October 1, 1996, you solicited comments concerning the proposal and issuance of a "404 Permit" within the guidelines of Nationwide Permits No. 13 and 26.

I represent Per and Winnifred Storli, Dallas Herron, and Richard Reynolds. They strongly object to issuance of a permit for Foys Canyon. These are a number of reasons that they cite:

1. There is serious data omission in the application. More information must be provided for public review before the EA and 404 Permit application become meaningful in any fashion to the public.

2. Both Carter & Burgess Engineering and The Montana Department of Transportation failed to address some very significant problems with the proposal.

3. Much of the wetland shown to be impacted by the proposal has already been drained, and the channel of the stream rerouted since the time that the EA was written. Thus, the EA does not address actual circumstances on the ground.

In the initial public hearing there were numerous objections regarding destruction of wetland, at Wetland Site Nos. 1, 3 and 4, as well as numerous other issues. The EA, as prepared by Carter & Burgess, fails to address any of those controversies, or the litigation that initially stopped construction of The Foys Canyon Road.

Factual information necessary for the public to make informed decisions regarding the 404 Permit have either been omitted, or skewed in such a fashion to make them virtually false. For example, the environmental assessment does not show the proposal's effect on the Birch and Patrick Creek confluence. The proposed roadway lies entirely within the 100 year flood plain and the wetland which will be covered by the proposed project from Wetland 4 through Wetland 3 and into The Foys Canyon. The confluence of the two streams, Birch and Patrick Creek lie under the proposed highway. Both will have to be completely rerouted for a significant distance prior to their confluence.

The road as proposed will block the two creeks, and rather than the 103.5 cubic yards of earth that the applicant indicates, will require massive amounts of fill to raise the proposed highway approximately 8 to 12 feet above the present level of the flood plain, thus creating a potential quarter mile long dam across the Patrick Creek/Birch Creek flood plain.

Attachment to Winnifred Storli's Comment Sheet

An individual 404 Permit should be necessary for at least two sites on the road, Wetland No 3 on the Storli farm, as that is the confluence of the two streams and is significantly impacted, and Wetland No. 1 as the diversion of water is not addressed in the EA or elsewhere. It appears that any water diverted from the existing swamp area at Wetland No. 1 will migrate onto a now existing sewage disposal system. The EA does not show cross sections of the roadway proposed through the confluence or adequately portray the elevated roadway through the "Zone A" floodplain and the confluence.

All of that information should be included in the EA and any 404 Permit records for public review. Those records have not, to date, appeared. For example, the Montana Department of Transportation has not produced a "hydraulics design report" with calculations and plans. There is no readily available record of a super elevated cross section. There are no culvert designs available. The hydrologic impacts have not been disclosed. The Department has failed to explain how they reconcile being able to compute adequate Floodplain and base flood calculations when their hydrology assessments were conducted in October rather than at spring high water.

It is impossible for the affected land owners and the general public to assess impacts without scientific maps and fill locations. MDOT's minuscule maps serve only to hide the hydrological impacts. In addition, the public needs the opportunity to review the 404 Permit process and comment on it effectively.

In closing, MDOT has failed to explore alternatives to this proposal that would not impact the wetlands or flood plain, with an eye to reducing those impacts. They instead took the initial plan that was prevented through litigation, reintroduced it, and mocked up an assessment of alternatives, deciding that "no build" was the only acceptable alternative. They failed to explore building to County standards or a truncated roadway serving the only subdivision in the area.

The Foys Canyon Environmental Assessment points out that the road does not meet any of the criteria of a "major collector" which is the primary criteria to meet the classification to obtain federal funds for a secondary designation for a state road. The Department still intends to proceed, not offering any alternative befitting the non secondary nature of the road that would have less impact on important wetland streams and flood plains.

I strongly urge your office to vigorously review the application and deny it for these reasons, or at least offer the public the opportunity to comment on the 404 Permit process rather than issue a blanket approval.

Sincerely,

Bruce A. Measure

BAM:tlk
cc: Per and Winnifred Storli
Dallas Herron
Richard Reynolds
FHWA
MDFWP
✓ MDT Marshik Hearing Transcript

Attachment to Winnifred Storli's Comment Sheet

Attn: 0733

10/25/96
Hearing Transcript

CN = Constructn
CE = Constructn Engineering

* Remove Foys Canyon R
Project Phase is error.
No environmental compliance.

MISSOULA DISTRICT 1
HIGHWAY PROJECTS
CONSTRUCTION PHASE

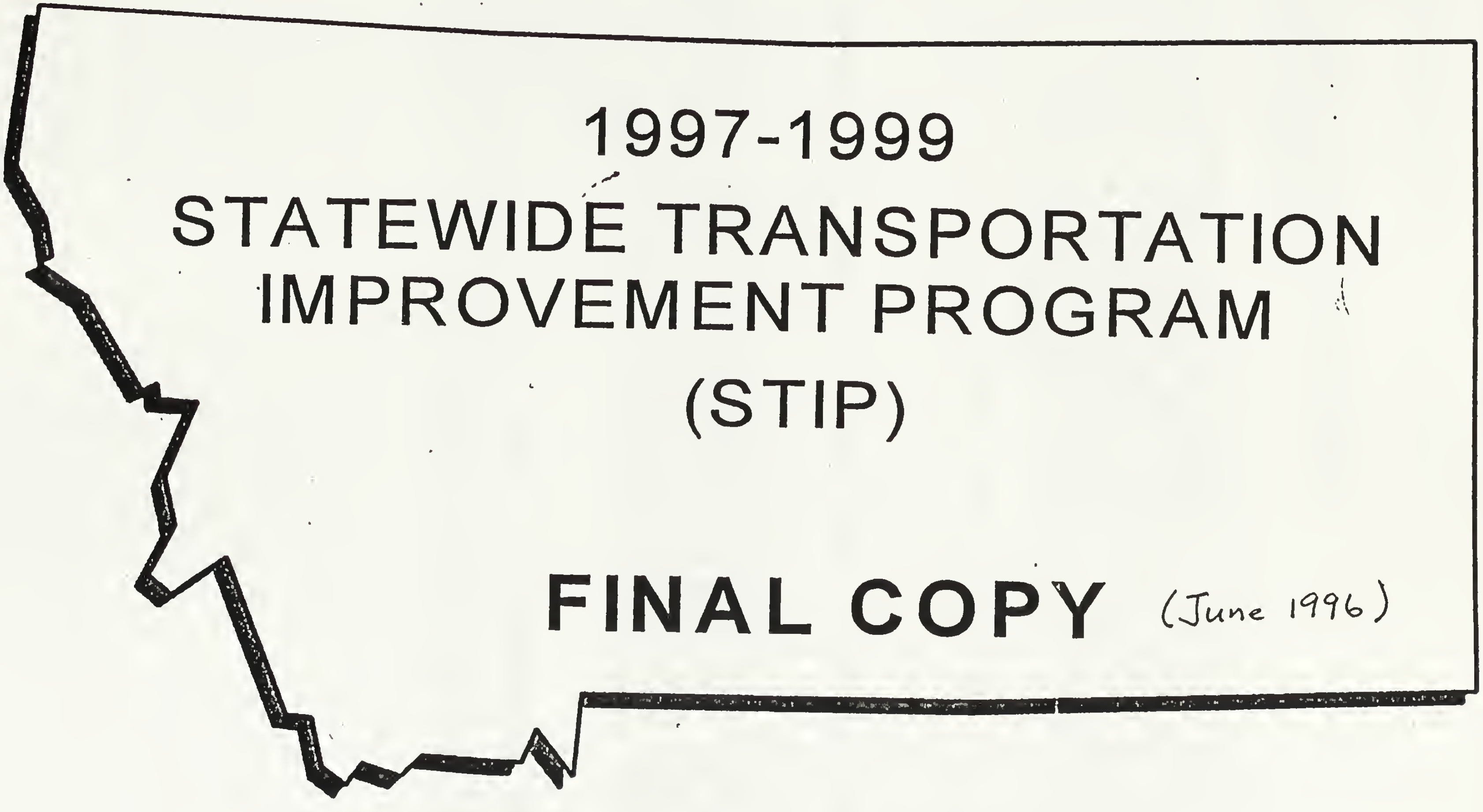
FISCAL YEAR	MAP KEY/ CONTROL NUMBER	PROJECT NUMBER	PROJECT NAME	PROJECT LOCATION	REF POST	PROJECT LENGTH	PROJECT TYPE	PROJECT PHASE	PROJECT COST ($MILL)
SURFACE TRANSPORTATION - SECONDARY									
97	0733*	STPS 503-1(6)4	✓ FOYS CANYON ROAD	MTS-503	3.81	3.77	RECONSTRUCT	CE,CN	1 TO 5
97	1279*	STPS 272-1(3)0	WESTSIDE PRISON ROAD	MTS-272	0	2.12	RECONSTRUCT	CE,CN	1 TO 5
97	2026*	STPS 382-1( )4	PERMA CANYON-N.	MTS-382	3.9	7.1	WIDEN & RESURFACE	CE,CN	1 TO 5
SURFACE TRANSPORTATION - URBAN									
99	2950	STPU 6701( )	NORTH MERIDIAN ROAD - KAL	U-6701	0	1.2	RECONSTRUCT	CE,CN	1 TO 5
SURFACE TRANSPORTATION - OTHER									
97	2163	STPX 32758(2)	WEST BROADWAY (EAST SECTION)	X-32758			INTERCHANGE	CE,CN	1 TO 5

* THESE PROJECTS ARE SHOWN ON ACCOMPANYING MAP

Attachment to Winnifred Storli's Comment Sheet

STATE OF MONTANA

DEPARTMENT OF TRANSPORTATION



1997-1999
STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM
(STIP)

FINAL COPY (June 1996)

AP v3676 r v mtn-m BC-ROAD IMPROVEMEN 9/18 04:16 P

Attachment to Winnifred Storli's Comment Sheet

BC-ROAD IMPROVEMENT/117/

ROAD CONSTRUCTION IS A COMMON SIGHT ALL OVER THE STATE OF MONTANA.

BUT HAVE YOU EVER WONDERED WHY CERTAIN ROADS ARE IMPROVED OVER OTHERS...

CHRIS PORTER HAS THE STORY.

(EFFECTS: TAKE PKG)
(CUE: TAKE PKG)
(CG: NEAR FOYS LAKE/TODAY)
(CG: MIKE COLLINS/CEO BIG MOUNTAIN SKI RESORT)
(CG: CHRIS PORTER/REPORTING)
(OUTCUE: MONTANA'S NEWS STATION.)
(LENGTH 1:)

ROAD CREWS ARE GETTING READY TO BEGIN UPGRADING THE FOYS LAKE ROAD NEAR KALISPELL. IF THE FINAL ASSESSMENT IS APPROVED... THE ROAD WHICH HAS AN AVERAGE TRAFFIC FLOW OF THREE HUNDRED CARS PER DAY... WILL HAVE SEVERAL OF IT'S CURVES STRAIGHTENED. MEANTIME ACROSS THE VALLEY THE ROAD LEADING UP TO BIG MOUNTAIN IS TORN UP... AND CRUMBLING AWAY. THE ROAD THAT HAS AN AVERAGE TRAFFIC FLOW OF 34-HUNDRED CARS PER DAY... HAS NO IMMEDIATE PLANS FOR IMPROVEMENT... THIS HAS MANY PEOPLE WONDERING IF OUR TAX DOLLARS ARE BEING PUT TO WORK IN THE RIGHT PLACES.

"IF YOU LOOK AT IT ON A COST PER MILE.. FOYS LAKE ROAD.. MILE AND A HALF SO."

STAND-UP

"WE'VE KNOWN FOR A LONG TIME... LIMITED FUNDS... WAIT IN LINE TO GET FUNDING."

BIG MOUNTAIN HAS BEEN ON THE CONSTRUCTION PRIORITY LIST SINCE 19-89.. AND IS CURRENTLY NEXT IN LINE FOR IMPROVEMENTS IF THE COUNTY CAN SCAPE UP THE SIX MILLION DOLLARS IT WOULD TAKE TO MAKE THE REPAIRS. THE REASON FOYS LAKE ROAD BEAT OUT BIG MOUNTAIN IS BECAUSE IT'S BEEN ON THE PRIORITY LIST SINCE 19-84... MANY PEOPLE SAY THIS PROVES THAT IF YOU NEED SOMETHING DONE IT'S BETTER TO BE FIRST IN LINE. IN KALISPELL THIS IS CHRIS PORTER FOR MONTANA'S NEWS STATION.

(EFFECTS: ANCHOR ON-CAM)
(CUE: ANCHOR ON-CAM)

THE FOYS CANYON ROAD PROJECT STILL NEEDS TO BE APPROVED BY THE STATE BEFPOE CONSTRUCTION CAN BEGIN.

IF THAT HAPPENS ROAD CREWS ARE EXPECTED TO BEGIN IMPROVING THE ROAD SOMETIME NEXT YEAR.

Cc: Public Hearing 10-25-96
Transcript

I. Letter dated October 16, 1996, from Per and Winnifred Storli

1. a. The U.S. Army Corps of Engineers (Corps) is responsible for Section 404 of the Clean Water Act. The Corps makes the determination whether an individual permit is required or not.
   b. The EA discloses floodplain impacts in Section 4.12 and wetland impacts in Section 4.10.
   c. Impacts to wildlife are addressed in Section 4.11 of the EA.
   d. The Biological Resource Report prepared for this project was used as the basis for the analysis of wetland impacts provided in Section 4.10.
   e. Floodplain impacts are discussed in Section 4.12 of the EA. A portion of the existing road is within the 100-year floodplain and the Preferred Alternative alignment will also impact the floodplain as shown on Figure 4-8 of the EA.
   f. The MDT is not responsible for the draining of any wetlands in this project area. Any wetland draining occurring in this area is not part of this project.
   g. Springs may be associated with wetland #3. As described in Table 4-6 of the EA, the functional classification of "high" groundwater discharge/recharge has been assigned to wetland #3 which would acknowledge its connection to groundwater.
2. a. We agree. Socioeconomic impacts are addressed in Section 4.3.2 of the EA.
   b. We agree that wildlife habitat will be lost. Wildlife impacts are addressed in Section 4.11. Recreation opportunities may be enhanced as discussed in Section 4.6 of the EA.
   c. Sale of a specific piece of property should not adversely affect taxpayers.
   d. The County Commissioners prioritized Foy's Canyon Road for improvements as discussed in Section 2.1.2 of the EA.
   e. Information related to cost was provided at the Public Hearing held on October 9, 1996. Approximately $500,000 has been spent on this project as of May 1995.
   f. A typical cross-section is provided in Figure 2-4 of the EA. Specific cross-sections for various locations were not developed because this level of detail is not necessary, instead a narrative description is provided within Section 4 of the EA. Wetland impacts are identified by acreage amount in Table 4-5 of the EA.
   g. The Wetland Finding is part of the Biological Resource Report. It includes results of a wetland inventory and delineation. This report is available upon request from MDT. The hydraulic report is on file at the MDT office in Helena. It is available to the public for inspection.
   h. The FHWA will determine whether significant impacts would result from the Preferred Alternative after review of all public comment received.
3. a. Signage is the responsibility of the County.
   b. The County will be notified of your observation regarding signage, via a copy of this document. Individuals may also contact the county directly to express these concerns.

c. See responses to comments a and b above.

d. The 1986 Categorical Exclusion identified safety as part of the purpose and need for the project. Members of the public attending the three meetings held for this project in 1995 and 1996 as well as written comments received during that time period have mentioned improvement of the road for safety reasons as a concern.

4. a. No information was provided on alcohol-related accidents because this information is not germane to the purpose and need for the project. Data regarding accidents in icy or snow conditions is provided in Table 2-3 of the EA.

b. We are unclear where the assumption that the road would have a 12-foot elevation in the floodplain area came from. The maximum elevation for the road would be six to seven feet above existing road. The preferred alternative includes 4:1 slopes that are recoverable, meaning that a driver could slide off and drive back up.

c. The County Commissioners prioritized Foy's Canyon Road for improvements as described in Section 2.1.2 of the EA.

d. Data on accidents is provided in Section 2.0 of the EA. The source of this data is MDT accident records.

5. a. Minutes were taken at both open houses. These are contained in Appendix A of the EA. Responses to many of the letters received by you were made.

b. A public hearing was held on October 9, 1996, as defined by FHWA regulations. See response to #17 - Bruce Measure.

c. We are unaware that anyone was ever informed that the EA was an EIS approved by the U.S. Army Corps of Engineers. It is true that the 404 permit must be approved by the Corps.

d. There are no documented fisheries spawning beds within the project impact area. The Montana Department of Fish, Wildlife and Parks (MDFWP) has issued a 124 Stream Protection Permit (permit number MDT-59-93) in December 1993. The MDFWP identified a number of special conditions that must be incorporated into the final plans and specifications to protect fisheries resources. The permit special conditions are expected to address any impacts to fisheries spawning areas.

e. The maximum elevation of the Preferred Alternative roadway is six to seven feet above the existing road.

f. All written requests for copies of the EA were promptly responded to. Attempts have been made to respond to other document requests as soon as possible. We apologize for any delays experienced.

Per K. Storli 3420 Airport Rd
PO Box 249
Kalispell, MT 59903

Joel Marshik

MASTER FILE COPY

RECEIVED
OCT 18 1996
ENVIRONMENTAL

cc: Jim Weaver
Carl Peil

3420 Airport Rd
P.O. Box 249
Kalispell
MT 59901
October 16, 1996

To: Robert E.McInerney
Program Manager Corps of Engineers
P.O.Box 10014,Helena MT 59626

To: Joe Marshik
Environmental Manager Dept. of Transport
2701 Prospect Ave.
Helena MT 59620

Ref: 199690354 Foy's Canyon Rd.

Dear Sirs,

As taxpayer, homesteader and citizen I am writing my comments and protest on the Oct.1996 environmental assessment by Carter and Burgess.

The entire neighborhood are agreed on the need for a safe,paved road similar to Whalebone Drive. Our traffic is less than the North Fork Rd. A much safer and better road than the one planned can be built at a fraction of the cost.Improvements and alternate safety and structural plans have been suggested by George Mumm, Bruce Measure, etc.

I Environmental Issues

1. An individual 404 permit is required because more than one wetland and special aquatic site will be taken.

2. The EA does not show significant and major impact on the Patrick/Birch Creek confluence,flood plain and wetlands.

3. Building an elevated road on or across wetlands and flood plains will have a very significant impact on fish, spawning grounds, birds nesting sites and animals in that habitat. Deer hide their fawn there, muskrats build their homes and ducks nest there yearly. Wetland #4 has a concentration of wildlife.

4. We disagree with the low and moderate ratings on Wetlands #3 and #4, pg.4-27, Also with the land fill percentages of 6% and 16% for wetlands #3 and #4. The EA had no scientific or detailed data to support their claim.

5. This project involves highway relocation into the 100 year flood plain. (Airport Rd. will be moved from outside the flood plain into it.)

6. The stream bed, dam and water course of Patrick Creek (wetland #4) were, recently, drastically changed making a mockery of the present findings in the EA. The existing earth dams breached, stream flow and beds changed and culverts introduced. Existing ponds changed or drained. This is in violation of the natural streambed and land preservation act. Has this been accepted by Carter - Burgess as being a preliminary step in construction? Is the marsh being drained in preparation for the highway? Can one change stream beds and dams and ponds at will?

7. Wetland #3 has springs, this has not been considered despite the wetland being a confluence at Patrick Creek and Birch Creek.

II. Economic Impact

8. More farm land will be destroyed. The pasture on the Storli Farm cut in two, the barn gone and it will no longer be farmed.

9. More wild life and recreational habitat lost.

10. Tax payers will suffer. Our property will no longer be a small farm. We will have to sell or become developers.

11. More economically needed projects such as the Big Mountain Rd will be delayed.

12. No report on how much this has cost is available to the taxpayer nor the total projected cost?

13. No cross section nor clear statement on the acreage involved or geographical changes. No mention of the cubic yardage and its impact on the farm or wetlands.

14. No Project Wetland Resource Inventory Impact Assessment or Hydraulic Design available.

15. Action should be stopped on FONSI since significant and major impact not disclosed in EA.

III Safety

16. Highway safety and speed signs are non existent.

17. No stop sign at Patrick Creek, Foy's Canyon junction despite the fact that school kids gather here and logging trucks come roaring down the hill at Patrick Creek. No speed signs. These are positive, immediate safety steps. No mention of such common sense issues even mentioned by Carter-Burgess. Citizens have been asking for this for twenty years and have been ignored.

18. If by your own argument this road is so dangerous why has MDT not bothered to put up any signs? Maintain traffic control devices 81-8-202 to 81-8-203? Is this negligence or an attempt to bolster their position?

19. In years of earlier input and meetings the danger factor was **an issue, never mentioned.** On the contrary the winding, country road was regarded as a contributory factor in preventing teen drag racing, speeding and mayhem.

IV. Safety Hazards

20. Patrick Creek, Foy's Lake and its environs is a favorite place for keggers. Booze and speed are a deadly combination. No data was provided on other accident related causes such as alcohol or icy conditions.

21. **The proposed 12 ft. elevation** of the road across the flood plain and wet lands is a major potential hazard. Especially when there are no barriers such as the mountain side, bushes, fences etc to cushion a winter slide over a 12 ft. embankment.

22. Is MDT holding county and citizens hostage using safety as a bargaining chip for forcing a more dangerous highway, urban sprawl, abandoned farms and environmental destruction?

23. Carter-Burgess has failed to provide data or sources on accidents, despite the fact that on other projects such as at Bad Rock Canyon accident data has been available without breaching confidentiality. How can comparisons between country roads or causation of accidents be assessed if this information is excluded?

V. Citizenry Issues

24. Before 1996 proper format for public hearings were conducted. In 1996 Carter-Burgess had preliminary open houses with cookies and coffee. People were taken around, shown pictures and pinned their comments on the wall. They could send in questions. To date 95% of my questions did not receive an answer. Minutes were not kept nor recordings made.

25. The final October session 1996 was labelled a public meeting. We did not meet as a group. There was no chance for the public to interact, hear other points of view, ask questions and clear up misinformation. This was a deceitful way of pretending to fulfill a requirement and fooling the public.

26. There was a tremendous amount of misunderstanding and misconception; for example, people being told that the EA was an environmental impact statement, approved by the Army Corp of Engineers, which it was not.

27. Not only were written queries not answered but the officials couldn't answer simple questions such as what is the effect on spawning beds? or the measurement or area required to build an elevated highway.

28. Documents arrived late or not at all.

The EA is a misleading, improperly conducted and crafted statement,on par with the environmental analysis that was thrown out of court May 18, 1995. This is an attempt to throw good money after bad. The county commissioners apparently would rather waste tax payer millions than object to being forced to pay the state $216,000/- for a botched pre 1995 plan. All this blatant ineptitude is being financed using our tax dollars.

Since the deadline is the 17th. Oct. I resubmit my comments in the hope that there will be a proper, professional, ethical evaluation not this hasty ramrodding we have been subjected too.

I attach FEMA maps and some clippings.

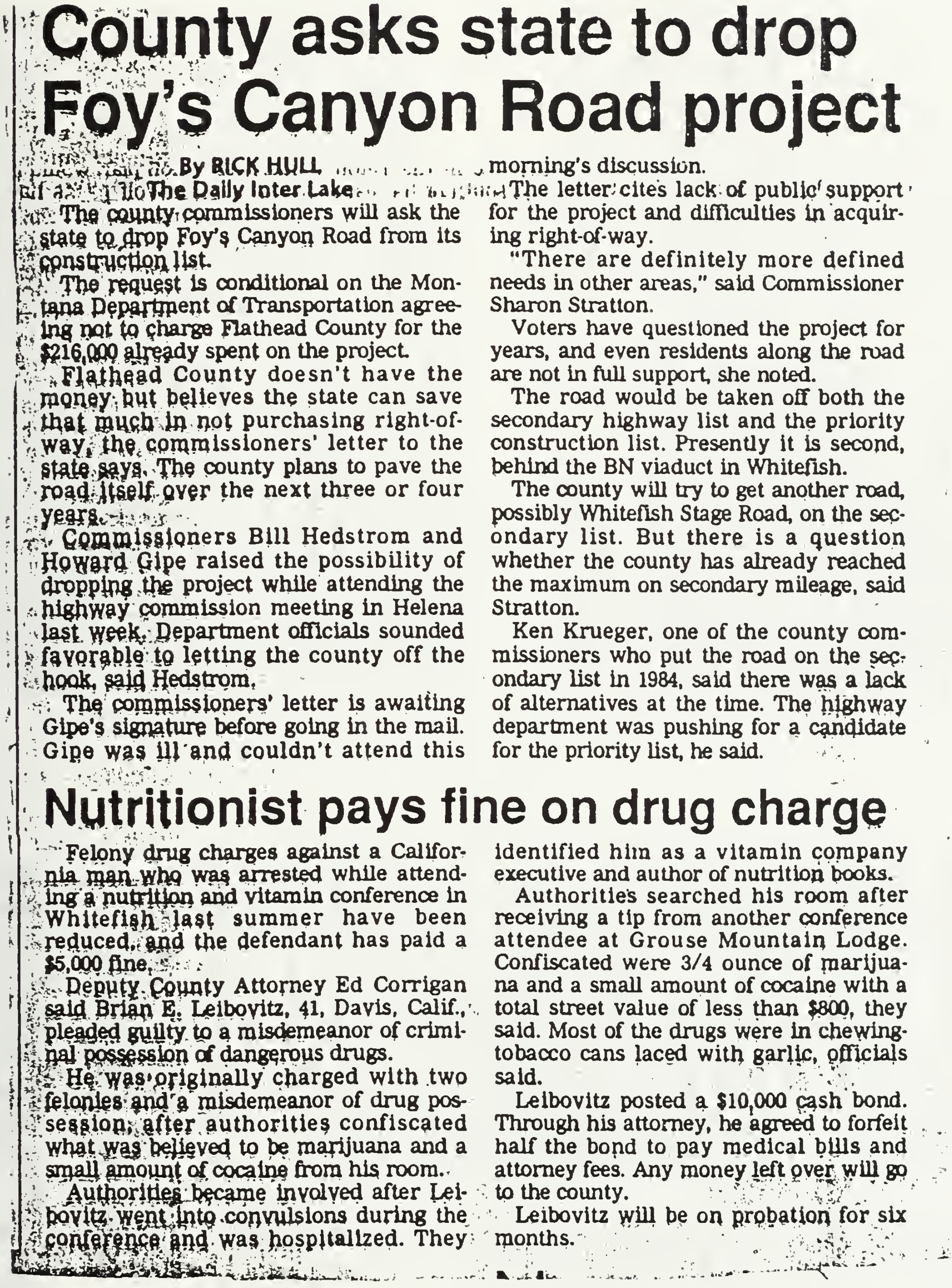
Sincerely yours,

Per + Winnifred Storli

Per and Winnifred Storli

cc Bruce Measure, Sharlon Willows, and the Department of Fish, Wildlife and Parks

Attachment to Per and Winnifred Storli's Letter



County asks state to drop Foy's Canyon Road project

By RICK HULL

The Daily Inter Lake

The county commissioners will ask the state to drop Foy's Canyon Road from its construction list.

The request is conditional on the Montana Department of Transportation agreeing not to charge Flathead County for the $216,000 already spent on the project.

Flathead County doesn't have the money but believes the state can save that much in not purchasing right-of-way, the commissioners' letter to the state says. The county plans to pave the road itself over the next three or four years.

Commissioners Bill Hedstrom and Howard Gipe raised the possibility of dropping the project while attending the highway commission meeting in Helena last week. Department officials sounded favorable to letting the county off the hook, said Hedstrom.

The commissioners' letter is awaiting Gipe's signature before going in the mail. Gipe was ill and couldn't attend this morning's discussion.

The letter cites lack of public support for the project and difficulties in acquiring right-of-way.

"There are definitely more defined needs in other areas," said Commissioner Sharon Stratton.

Voters have questioned the project for years, and even residents along the road are not in full support, she noted.

The road would be taken off both the secondary highway list and the priority construction list. Presently it is second, behind the BN viaduct in Whitefish.

The county will try to get another road, possibly Whitefish Stage Road, on the secondary list. But there is a question whether the county has already reached the maximum on secondary mileage, said Stratton.

Ken Krueger, one of the county commissioners who put the road on the secondary list in 1984, said there was a lack of alternatives at the time. The highway department was pushing for a candidate for the priority list, he said.

Nutritionist pays fine on drug charge

Felony drug charges against a California man who was arrested while attending a nutrition and vitamin conference in Whitefish last summer have been reduced, and the defendant has paid a $5,000 fine.

Deputy County Attorney Ed Corrigan said Brian E. Leibovitz, 41, Davis, Calif., pleaded guilty to a misdemeanor of criminal possession of dangerous drugs.

He was originally charged with two felonies and a misdemeanor of drug possession, after authorities confiscated what was believed to be marijuana and a small amount of cocaine from his room.

Authorities became involved after Leibovitz went into convulsions during the conference and was hospitalized. They identified him as a vitamin company executive and author of nutrition books.

Authorities searched his room after receiving a tip from another conference attendee at Grouse Mountain Lodge. Confiscated were 3/4 ounce of marijuana and a small amount of cocaine with a total street value of less than $800, they said. Most of the drugs were in chewing-tobacco cans laced with garlic, officials said.

Leibovitz posted a $10,000 cash bond. Through his attorney, he agreed to forfeit half the bond to pay medical bills and attorney fees. Any money left over will go to the county.

Leibovitz will be on probation for six months.

Attachment to Per and Winnifred Storli's Letter

5/18/95

Court blocks Foy's Canyon road project

By JO ANN SPEELMAN
The Daily Inter Lake

A District Court order signed Wednesday has halted the controversial Foy's Canyon Road reconstruction project and stops the state from condemning land for right-of-way.

The action came after the state, in response to a landowners' lawsuit, admitted it had not done an environmental analysis for the project or determined the public safety and need for the improvements. The ruling is expected to delay the work for two or three years — and possibly forever.

District Judge Kitty Curtis dismissed the state's condemnation actions for the road project. Earlier, attorneys for landowners along the road and the state had agreed that the Department of Transportation will complete the required environmental analysis before making any further decisions about the project.

After that, the transportation department will decide which design, if any, to adopt for Foy's Canyon Road. The project, which was at the top of the county's secondary road project list, calls for realigning, rebuilding, widening and straightening the road from its intersections with Airport Road and Foy's Lake Road.

Winnifred and Per Storli, Dallas I. Herron and Richard R. Reynolds went to court to stop the state from condemning their property for right-of-way.

The Foy's Canyon Road project

■ May affect plan for resort road

By The Daily Inter Lake

Foy's Canyon Road's legal problems may relieve Flathead County of a longstanding headache and push The Big Mountain Road — and its accompanying controversy — to the top of the road reconstruction priority list.

State highway officials will meet next Wednesday with the county commissioners to lay out the options for Foy's Canyon Road.

A major issue is whether the Montana Department of Transportation will allow Flathead County to drop the Foy's Canyon Road project without repaying $223,474 already spent on it. The pay-back policy many not apply if the road project

See RESORT on Page A2

county entered the planning, suggesting the road be built to county standards, instead of the wider proposed ones.

The county commissioners considered abandoning the project in 1992 because of lack of public support, difficulties securing right-of-way and concern about the feasibility and need for the work.

But state and federal officials said the county would have to pick up about $216,000 already spent on design and engineering if the project were junked.

—Court

Continued from Page A1

continued with the project.

Planning for Foy's Canyon Road began with a state public hearing in 1988. The project was to start about two miles southwest of Kalispell at the end of the Foy's Lake Road pavement and extend 3.8 miles southeasterly to reconnect to Airport Road three miles south of town. The state proposed a 28-foot paved road with a 40-mile-per-hour speed limit.

The state hoped to have the project ready to go last May, with utilities moved and right-of-way acquired. Based on available funds, the contract was to be let last August.

But the state failed to meet the schedule, and then the three landowners went to court, claiming the state had not conducted the required environmental analysis, nor designed a project that caused the least injury to private landowners.

State attorney Peter LaPanne agreed that the environmental analysis had not been done. He estimated it would take two or three years to finish it.

The state, he said, "is not prepared to proceed with this condemnation action and will not be so prepared until the environmental analysis is completed.

The environmental analysis will be used to determine which, if any, reconstruction alternative will be selected."

—Resort

Continued from Page A1

is held up by court action, said Gary Larson of the Department of Transportation.

The $1.85 million Foy's Canyon Road reconstruction leads the county's priority list for secondary highways, following last year's completion of the Whitefish viaduct. But the county commissioners have more important priorities in mind, including Whitefish Stage Road.

Dropping Foy's Canyon Road would immediately free the $2.1 million in the county's secondary-road account for the $6.5 million Big Mountain Road, which is second on the priority list. Money accumulates in the account at the rate of $780,000 a year.

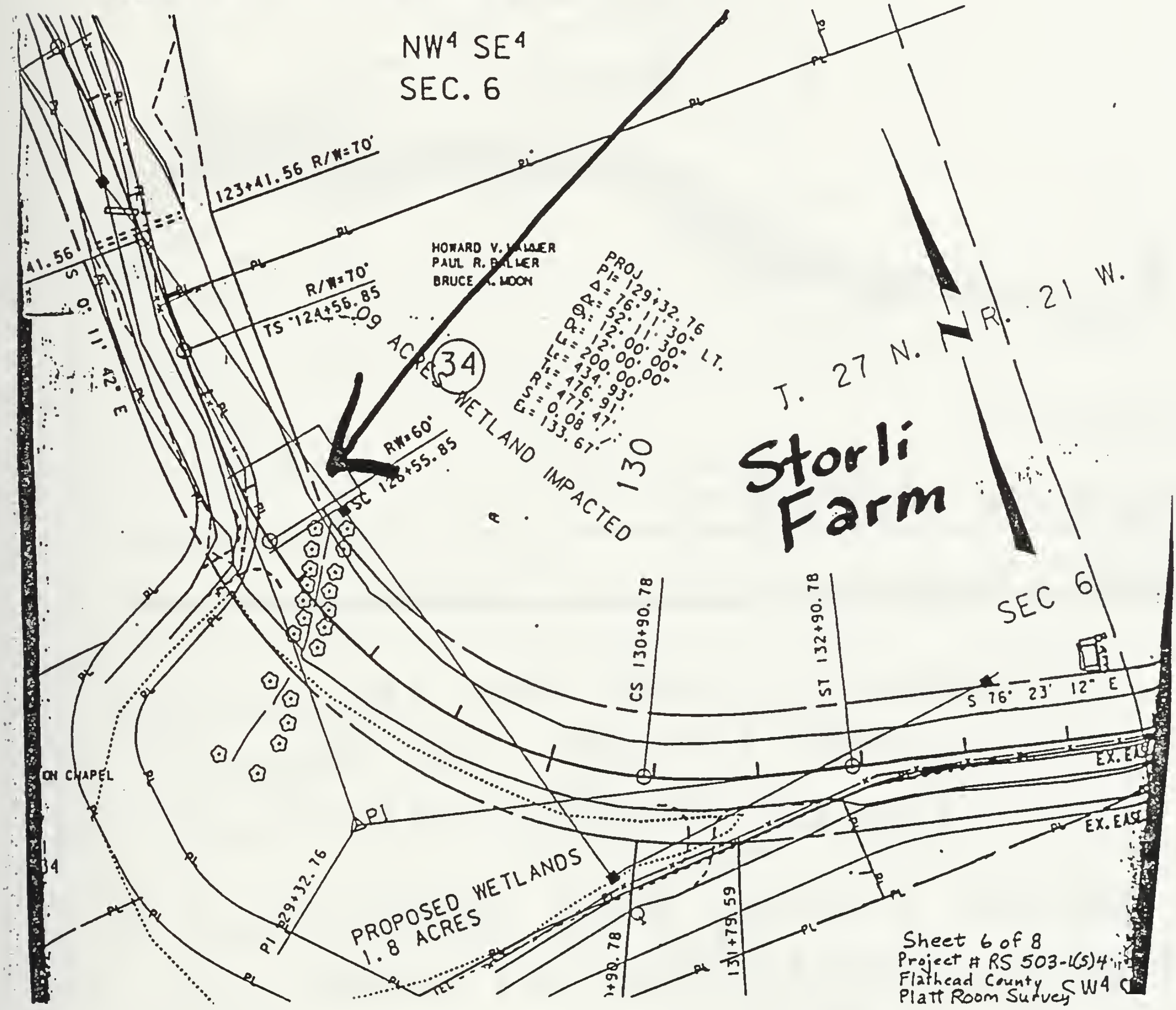
But County Commissioner Sharon Stratton wants the ski resort to contribute toward rebuilding The Big Mountain Road, and County Commissioner Bob Watne would like to see it dropped from the list completely.

Foy's Canyon Road was put on the priority list in 1984. Other alternatives were in short supply, and the project made some sense, since it promised to fill in a gap between the rebuilt portions of Airport Road.

But growth has headed north instead of south since then, and Whitefish Stage is in desperate need of rebuilding. Watne also wants to add Ashley Lake Road and KM Road to the county's secondary list.

Attachment to Per and Winnifred Storli's Letter

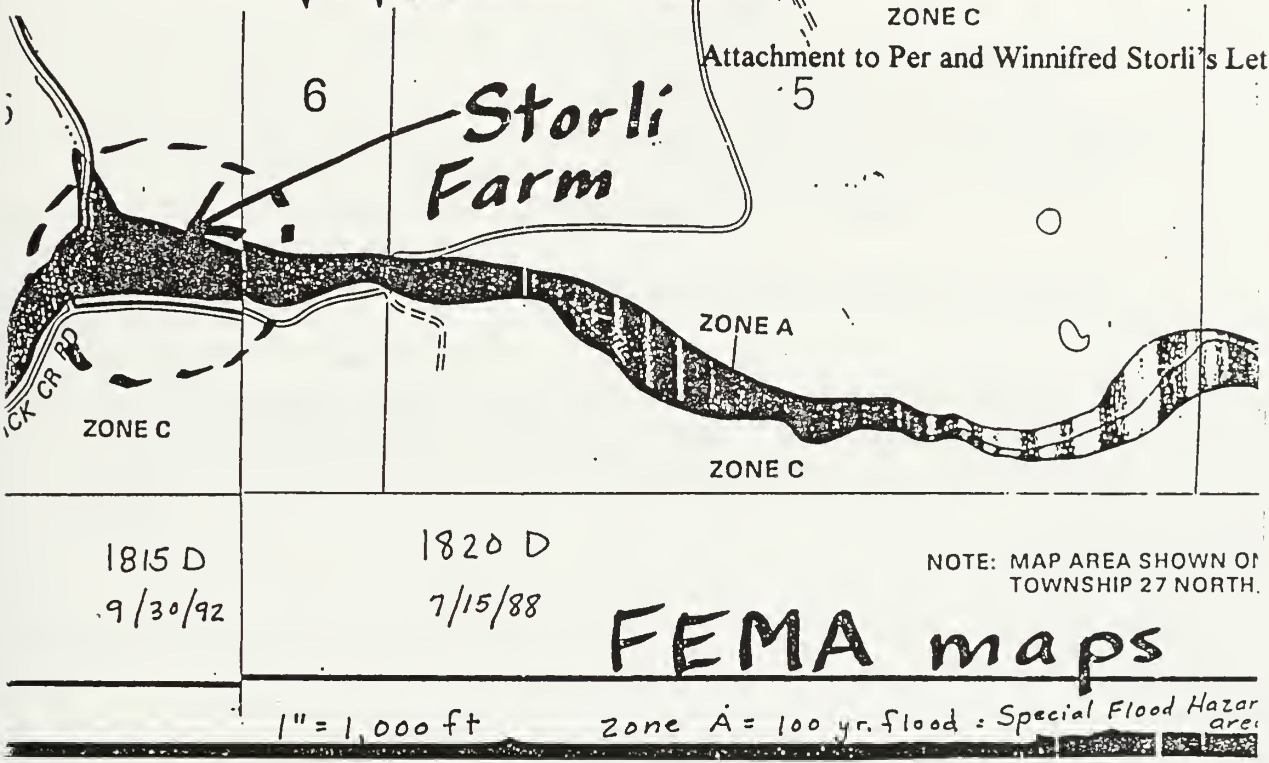
EA does not disclose important stream confluence area



* individual 404 permit and appropriate graphic disclosure is needed for the stream confluence and wetland #3 area.

Avoidance Alternative For Storli Farm Flood Plain Needed

Attachment to Per and Winnifred Storli's Letter



FEMA maps

1" = 1,000 ft Zone A = 100 yr. flood : Special Flood Hazar are

- EA does not show proposal's impact on Birch & Patrick Crk. Confluence (on Storli Farm).

- Individual 404 permit needed for Storli Farm floodplain/wetland #3.

- EA does not show cross sections of elevated roadway proposed thru the core of Zone A floodplain and thru the confluence area.

J. Letter dated October 14, 1996, from Dallas Herron to the U.S. Army Corps of Engineers for Iven C. Herron and members of the Herron Trust

1. Purpose and need is described in Section 2.0 of the EA.
2. As discussed in Section 2.5 of the EA, "Improvements to the Foy's Canyon Road portion of S 503 will serve to connect two highway segments which have been improved to secondary roadway standards. Drivers expect that a secondary highway will provide an adequate travel surface with consistent design features throughout its length." The center should also be improved for these reasons.
3. See response to comment 1 above.
4. Right-of-way width is based on the need for clear-zones as described in Section 2.0 of the EA.
5. See response to comment 4 above.
6. The vehicle count provided by MDT has been reviewed and appears accurate.
7. We are unsure which problems you are referring to. For example, accident problems are addressed by the Preferred Alternative as described in Section 1.2 of the EA.

Joel Marshik

RECEIVED

OCT 18 1996

ENVIRONMENTAL

October 14, 1996

cc: Jim Weaver
Carl Peil

Dallas Herron
P O Box 9200
Kalispell, MT 59904

Corps of Engineers
Helena Regulatory Office
301 S Park Drawer 10014
Helena, MT 596269

Subject: Foys Canyon Road
RS503-1(4)4
Reference #1996900354

Dear Mr. Robert E. McInerney,

Per your October 1, 1996 memo, I would like to comment on Montana Department of Transportation's Proposal for reconstruction of Foys Canyon Road, project RS503-1(4)4.

Please refer to the Environmental Assessment, page 4-27, table 4-6 (attached). If the wetland #1 is 59% filled, how will the **high** impact of fish and wildlife sediment filtration, recreation/education potential and most of all the groundwater discharge/recharge be mitigated?

The Environmental Assessment information was provided in the October 5, 1996 public meeting. It was not available prior to this date. This information is vital and should have been sent to all impacted parties.

I would like to address the following:

1. Why should there be a major wetlands disrupted for such a small amount of traffic (200-300 cars per day)?

2. Since its a Loop road, no need exists for the center piece to be as wide as the ends near the more populated areas. Traffic flows from the center both ways. Very little is thru traffic.

3. Prime farmland is taken from agriculture production for questionable purposes. Where is the documented need?

4. In the E.A., many alternatives are discounted because they may add costs. Why not reduce the road size (Right of Way) to cut costs if cost is a determining factor.

5. There are hundreds of miles of roads in the county with lesser right of way and paved surfaces. Is this road a candidate to do the same to preserve the wetlands?

6. The traffic count should be reviewed since most traffic flows both directions in the loop. The 200 to 300 count may not be correct. Please review how this was calculated. This is not thru traffic that is being counted!

The E.A. doesn't address solutions to the problems that are described. Further review is essential.

In summary, I urge you to recommend further extensive study on why the wetlands need to be ruined at all. This drainage feeds into the valley floor and is a major source of aquifer recharge and as such should be preserved at all costs. There are alternate engineering solutions to improving this low use roadway.

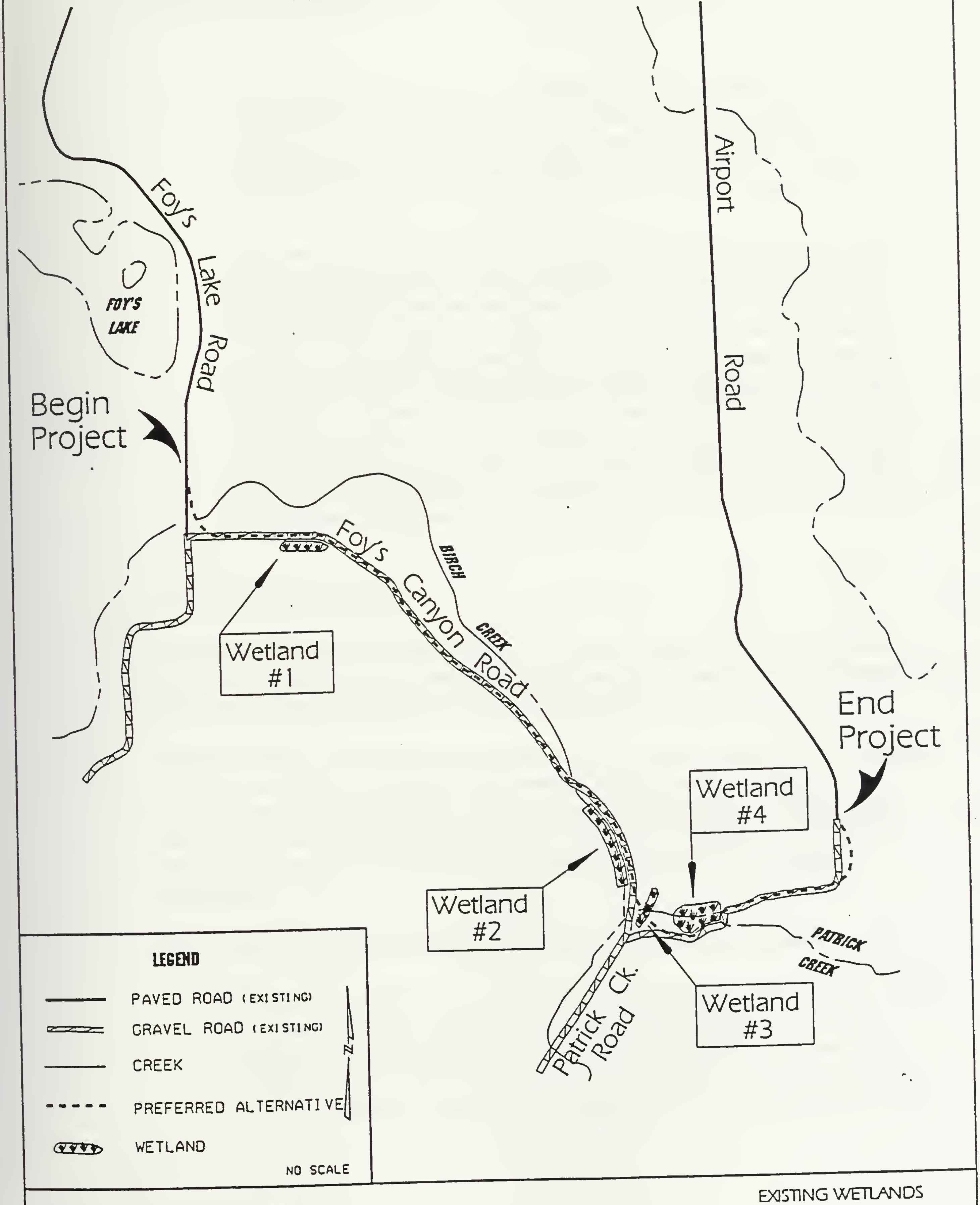
Thank you for your consideration for further study of this project. Better alternatives need to be investigated.

Sincerely,

Dallas Herron, For Iven C Herron and members of the Herron Family Trust

cc: Joel Marshik - MT DOT

Attachment to Dallas Herron's Letter



FOY'S CANYON ROAD

EXISTING WETLANDS
Figure 4-7

30 feet) wide along its path. The channel is 31 to 61 centimeters (1 to 2 feet) deep in most places and was running full during the investigation. The adjacent stream banks slope very gently toward this channel so that at 4.6 meters (15 feet) from the channel the ground is only 45 to 50 centimeters (18 to 20 inches) above the ordinary high water mark in the open channel.

- **Wetland Site #4** - Site 4 is an emergent freshwater marsh created by the impoundment of Patrick Creek for agricultural purposes. It appears that these irrigation ponds may no longer be in regular use. The ponds have silted in and are completely vegetated. At the time of investigation, shallow surface water appeared sporadically through out the wetland. Although there are no large or significant open channels, surface water was flowing sinuously throughout the area in rivulets, eventually flowing out a breach in the berm close to the roadway. There are several parallel dikes or berms built approximately perpendicular to the original flow of the stream. The stream flows around the end or through the breach of the lowermost berm into a culvert and crosses underneath the road.

4.10.2 Wetlands Impacts

Impacts that will occur to wetlands include short-term impacts during construction, long-term impacts due to the placement of dredged or fill material in the wetlands, and long-term indirect effects due to receipt of runoff from the paved roadway.

Wetlands along the existing road (includes all of the identified wetlands) are currently receiving impact due to activities on adjacent agricultural lands, as well as sedimentation and pollutants (e.g., gravel) released during wind and runoff events. These impacts will continue with the No-Build alternative. However, the No-Build alternative will result in no additional fill in adjacent wetlands due to roadway construction.

Impacts related to the construction of the Preferred Alternative are described below:

- **Wetland #1:** This wetland is contained on its northern border by the existing roadway and will be impacted by the Preferred Alternative due to the proposed road widening and the construction of fill slopes. A total of 0.17 hectares (0.41 acres) or 59 percent of the existing wetland will be impacted, leaving a remaining wetland size of approximately 0.12 hectares (0.29 acres).

- **Wetland #2:** This wetland is narrow and long and will incur substantial impacts due to road widening and the construction of fill slopes required by the Preferred Alternative. A total of 0.34 hectares (0.85 acres), or 89 percent of the total existing wetland will be impacted, leaving a remaining 0.05 hectares (0.11 acres) of roadside wetland.

- **Wetland #3:** Unlike the other three wetlands, this wetland is not adjacent to the existing roadway and will be crossed rather than longitudinally encroached. The Preferred Alternative will cut through Wetland #3 in an attempt to smooth the existing curve of Foys Canyon Road as it exits the southern end of Foys Canyon. A total of 0.03 hectares (0.08 acres), or six percent of the total existing wetland will be impacted, leaving 0.46 hectares (1.13 acres). Of the four sites, wetland #3 will undergo the least relative impacts due to construction of the Preferred Alternative. There are no further impacts anticipated due to drainage improvements or culvert installation.

- **Wetland #4:** This wetland is located adjacent to the S-curve in Foys Canyon Road on the west side. The Preferred Alternative will impact 0.28 hectares (0.7 acres), or 16 percent of the total existing wetland, leaving 1.4 hectares (3.6 acres) of wetland.

To summarize, the following direct, permanent impacts (see Table 4-5) would occur as a result of implementation of the Preferred Alternative:

Table 4-5
Wetland Impacts

Site No.	Existing Area	Impacted Area
1	0.28 hectare (0.[illegible] acre)	0.17 hectare (0.41 acre)
2	0.39 hectare (0.96 acre)	0.34 hectare (0.85 acre)
3	0.49 hectare (1.21 acres)	0.03 hectare (0.08 acre)
4	1.72 hectares (4.3 acres)	0.28 hectare (0.7 acre)
Total	2.88 hectares (6.75 acres)	0.82 hectare (2.04 acres)

In addition, there will be short-term impacts during construction.

Proposed drainage improvements planned in conjunction with the Preferred Alternative will improve the overall quality of the drainage into the wetlands.

In regard to indirect and cumulative impacts of the project as it relates to the growth in the project area, Flathead County has adopted the *Flathead County Master Plan*

Update which includes protection of wetlands and water quality. The County may implement the plan through zoning or other regulations.

4.10.3 Wetland Functions Impacted

The functions impacted for each wetland are provided in Table 4-6. Also included in this table is the percent of wetland filled which is another factor in determining the functions impacted.

Table 4-6
Wetland Functions Impacted

Parameters	Wetland #1	Wetland #2	Wetland #3	Wetland #4
Wetland Size	Moderate	Moderate	Low	Moderate
Habitat Diversity	Moderate	Low	High	Moderate
Food Chain Support	Moderate	Moderate	Moderate	Moderate
T&E/Species Habitat	Moderate	Moderate	Moderate	Moderate
MNHP Species Habitat	Moderate	Low	Moderate	Low
General Fish & Wildlife Habitat	High	Moderate	Moderate	Moderate
Flood Control and Storage	Moderate	High	Moderate	Moderate
Sediment Filtration	High	High	High	High
Erosion Control	None	Moderate	Low	None
Nutrient Cycling	Moderate	High	High	Moderate
Groundwater Discharge/Recharge	High	Moderate	High	High
Uniqueness	Moderate	Moderate	Moderate	Moderate
Recreation/Education Potential	High	Moderate	High	High
MDT Wetland Rating	II	II	II	II
Percent of Wetland Filled	59%	89%	6%	16%

4.10.3.1 Functional Impacts Descriptions

Site #1

Functions impacted at Wetland Site #1 are moderate. This is a well formed and diverse wetland with an MDT rating of II. Although it is relatively small in size, the vegetation is well zoned from the upland to small patches of open water. This wetland provides moderate or high functionality in many categories, including diversity, wildlife habitat, sediment filtration and recreation/education potential. Additionally, a large percentage of the wetland will be filled (59%). However, the encroachment is from only one side, thus, the Preferred Alternative does not split the wetland leaving the remainder in two small isolated pieces. Habitat and many of the other functions will still occur in the remaining wetland areas.

The existing roadway detains the surface flows of water and perhaps groundwater as well. Regrading and installation of a culvert as part of the Preferred Alternative may drain the entire wetland and remove all of the functions.

Site #2

Functions impacted at Wetland Site #2 are moderate to high based on the large percentage of wetland area to be impacted (89%). Site #2 is linear and narrow due to the physical constraints of the canyon. This wetland has an MDT rating of II. Removal of 89% of this wetland will hinder the "corridor" effects for habitat and flood conveyance/storage currently supplied by this wetland/riparian zone.

Site #3

Functions impacted at Wetland Site #3 are moderate. This wetland site is relatively important and has an MDT rating of II. Only 6% of the total area will be impacted. The impact is moderate to low if the prescribed mitigation is implemented. If the mitigation, which entails removal of the original culvert and restoration of the riparian vegetation, is not implemented then not only does the physical footprint of the new roadway need to be considered but the additional space between the old alignment and the new alignment which will become isolated. Any habitat value for this isolated piece will also be diminished. Functions impacted under this "island" scenario will be higher, potentially moderate to high.

Site #4

Functions impacted at Wetland Site #4 are low. Although this is a highly rated wetland (MDT rating of II), the minor amount of physical impact (only 16.0% of total area) held to a specific peripheral location reduces the overall impact to functions for the wetland. The remaining wetland areas should continue to function as they do currently.

4.10.4 Practicable Alternatives

Wetland #1: The alternatives which would avoid or minimize fill in this wetland include the No-Build Alternative, Pave Existing Surface Only Alternative, Non-Secondary Road to 48 kph (30 mph) Design, and Modification A. The No-Build

Alternative does not meet purpose and need for the project. The Pave Existing Surface Only Alternative and the Non-Secondary Road to 48 kph (30 mph) Design do not meet purpose and need for the project and are not eligible for federal or state funding. Modification A was not advanced for the following reasons:

- Increased impacts to prime farmland.
- The splitting of a parcel.
- Landowner objections.

Wetland #2: Alternatives which would avoid or minimize fill in this wetland include an alignment shift to the east, the Pave Existing Surface Only Alternative, and the No-Build Alternative. The alignment adjacent to Wetland #2 is substantially constrained by the canyon topography, and an alignment further east would result in slope or rock cutting. The Pave Existing Surface Only Alternative does not meet purpose and need for the project and is not eligible for federal or state funding. The No-Build Alternative does not meet purpose and need for the project.

Wetland #3: Alternatives which avoid or minimize fill in this wetland include bridging over the wetland, the No-Build Alternative, the Pave Existing Surface Only Alternative, and Modification B. Bridging is not considered a practicable alternative due to its greater cost (approximately three times the cost of a section of fill) and its greater safety hazard due to icing in the winter. The No-Build Alternative does not meet the purpose and need of this project. The Pave Existing Surface Only Alternative does not meet purpose and need and is not eligible for state or federal funding. Modification B was not advanced for the following reasons:

- Increased impacts to residential areas (noise, visual).
- The steep grade of the alignment would require substantial cut and fill.

Wetland #4: The alternatives which would avoid fill in this wetland are the No-Build alternative, the Pave Existing Surface Only Alternative, the Non-Secondary Road to 48 kph (30 mph) Design, and Modification C. The No-Build alternative does not meet purpose and need for the project. The Pave Existing Surface Only Alternative and the Non-Secondary Road to 48 kph (30 mph) Design do not meet purpose and need for this project and are not eligible for state or federal funding. Modification C was not advanced for the following reasons:

- Right-of-way would be required from 4 additional properties, resulting in landowner hardship and increased project cost.
- Three driveways would be relocated.

- Visual impact from a nearly 12 meter (40 foot) vertical cut and the removal of a stand of mature coniferous trees.
- A substantial increase in construction costs.

4.10.5 Wetlands Mitigation

Foys Canyon Road has been designed to avoid if possible, then to minimize disturbance and impacts to identified wetlands. However, since some wetlands are immediately adjacent to the existing roadway, complete avoidance of wetlands is not possible.

The overall mitigation goal must be no net loss in wetland area or quality. The Council on Environmental Quality (CEQ) (40 CFR 1508.20) provides regulations for sequencing of mitigation in the following order of priority:

- Avoidance of wetlands. Avoiding the impacts altogether by not taking a certain action or parts of an action.
- Minimization of Impacts. Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Repair, rehabilitation, restoration. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- Preservation and maintenance. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- Replacement. Compensating for the impact by replacing or providing substitute resource or environments.

Replacement wetlands (either created or restored) can only be used if there is no practical alternative to the discharge of dredged or fill material in a wetland which will have less adverse impact on the aquatic ecosystem and without other significant adverse environmental consequences that do not involve discharges into the Waters of the United States.

Permits for placing fill in wetlands must be obtained from the US Army Corps of Engineers under Section 404 of the Federal Clean Water Act, amended.

The COE will determine, as part of the Section 404 Permit, whether compensatory replacement wetlands are required. If replacement wetlands are required for

mitigation of unavoidable permanent impacts to wetlands, a mitigation plan will be prepared.

MDT policy states that when avoidance is not possible, on-site mitigation will be given priority. In the event that replacement or enhancement is not possible due to construction, maintenance, safety, or other constraints, off-site mitigation will be considered.

General Mitigation Guidelines

The detailed mitigation plan will be developed in close coordination with the US COE, EPA, and the USFWS. The mitigation plan will follow the US COE *Habitat Mitigation and Monitoring Proposal Guidelines* and will be finalized prior to the issuance of the 404 permit. MDT is the responsible entity for funding and implementing the mitigation plan. Wetland mitigation is part of the project cost.

Success criteria for wetlands mitigation will consider the following:

a. Percent vegetative cover within the mitigation wetlands should be equal to or greater than the percent vegetative cover of the lost wetlands within a five-year period.

b. Vegetative species composition and diversity should closely approximate the composition and diversity of lost wetlands. One method for doing this could be by comparison of plant numbers and vegetative species lists at the lost wetlands and the mitigated wetlands.

Corrective action will be taken if criteria established for wetland mitigation success at the time of Section 404 permit application are not being met.

Minimization and Restoration During Design and Construction

Where wetland losses are unavoidable, wetland losses will be minimized by implementing conservation measures in roadway design and construction.

Conservation measures that will be considered include:

- Fill/cut slopes adjacent to wetland areas will be provided with erosion control silt fencing.

- Minimize vegetation removal.
- Revegetate all exposed areas to MDT standards to reduce erosion and sedimentation.
- Revegetate areas with desirable ground covers to inhibit invasion of noxious weeds and for aesthetic purposes.
- Coordinate weed control, seeding, and fertilization with the Flathead County Weed Control authority and MDT.
- Flag or fence wetland areas during construction to avoid unnecessary disturbance due to construction activities.
- Provide bank stabilization and erosion control to meet standards defined by the *MDT Highway Construction Standard Erosion Control Plan*.
- Wetland delineation boundaries will be incorporated into design plans.

Based upon the above considerations, it is determined there is no practicable alternative to the proposed construction in wetlands and that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

4.11 Wildlife / Threatened and Endangered Species

Information pertaining to endangered and threatened wildlife, fish, and vegetative species was obtained from the US Fish and Wildlife Service (USFWS); Montana Department of Fish, Wildlife and Parks (MDFWP); the Montana Natural Heritage Program (MNHP); the Montana Rivers Information System (MDFWP 1993); interviews with local area residents; a review of available literature relevant to the area; and a field survey conducted on October 2, 1995.

4.11.1 Existing Conditions

Nine species within Montana have been identified as either threatened or endangered by the US Fish & Wildlife Service. These species are listed in Table 4-7.

K. Letter Received from Richard D. Cohen dated October 24, 1996

1. Floodplain impacts including impacts at the Birch and Patrick Creek confluence are described and analyzed in Section 4.12 of the EA.
2. The U.S. Army Corps of Engineers is responsible for administration of Section 404 of the Clean Water Act. The Corps has required a 404 permit to impacts at all four wetlands in the project area.
3. Fisheries mitigation is addressed in Section 4.11 of the EA.
4. Reduced standard improvements were considered in Section 3.2 of the EA.

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OCT 28 1996
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MASTER FILE
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10/24/96

Joel Marshik
Environmental Unit
Mt Dept of Transportation
P.O. Box 201001
Helena, Mt 59620-1001

Dear Joel:

I am writing you in regards to the Foy's Canyon Road Environmental Assessment. Hind sight is usually 20/20 but the EA does not clearly show the impacts that will occur at the Birch and Patrick Creek confluence. Also a 404 permit should be required for the Storli Farm flood plain/wetland area. The EA also fails to mentions fisheries and mitigation of impacts.

I know that the area has already been highly altered, but that does not justify the proposed magnitude of the road improvements. What makes the most sense in this area is to modernize the existing roadway to paved County standards and to use signage to reduce speeds and address safety issues.

What makes the Foy's Canyon Area so unique is its own environs. One could say that the road should have never been built where it presently lies. But the road is there and building a road that just disregards the natural flows and existing habitats in the name of the automobile does not make any sense in the 1990's.

Lets rebuild a road that makes sense! Thank you for your considerations.

Sincerely

Richard D. Cohen

Richard D. Cohen
P.O. Box 1782
Whitefish, MT 59937
862-5711

L. Comment Form Received at MDT on October 16, 1996, from E. Joseph Liechty

1. A stop sign controlled tee intersection at Patrick Creek Road was considered in Section 3.2.4.2 of the EA.

Joel Marshik

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Foy's Canyon Road

PUBLIC HEARING
COMMENT SHEET

25 cc: Carl Peil
Jim Weaver

This comment sheet must be postmarked no later than October ~~18~~, ~~1996~~.

I have the following comments or questions about the Foys Canyon Road Improvement project:

I viewed all the exhibits at the public hearing 10-9-96. I am fully aware that there will never be unanimous approval of any change. In my opinion the best design was the original one. There is no question in a rational person that the project is necessary because of accidents and the marked increase in traffic I have noted over the past 15 yrs. To allay fears of the road becoming a high-speed racetrack putting an intersection at Patrick creek road might be reasonable.

Thank you

Name: E JOSEPH LIECHTY
Address: 275 WILDROSE TR
Phone: 406 756-6574

(above information is optional)

M. Comment Form Received at MDT on October 24, 1996, from Russ Hadley and Carolyn M. Duncan

1. Comments noted.

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OCT 24 1996
ENVIRONMENTAL

Joel Marshik

MASTER FILE COPY

Foy's Canyon Road

PUBLIC HEARING COMMENT SHEET

cc: Carl Peil

This comment sheet must be postmarked no later than October ~~18~~ 25, 1996.

I have the following comments or questions about the Foys Canyon Road Improvement project:

I would Like To see the road paved ASAP and quit wasting Time and money.

It seems to me, in attending different meetings held in regard to this road, that all but a few people want the road paved. If it had been done several years ago like it should have been, there would never have been an issue of whether to do an EIS.

There have been lots of accidents at various points along the road, at least two of which involved school buses. Too often, it seems that nothing is done about dangerous roads until someone is killed. Let's not wait till that happens.

Name: Russ Hadley & Carolyn M. Duncan

Address: 193 Shelter Valley Dr.

Phone: 752-3661

(above information is optional)

N. Comment Form dated October 16, 1996, from the Blue & White Motel, Inc.

1. Secondary Highway 503 is a federal roadway and is eligible for 86% federal funding for improvements.
2. Reduced standard improvements are addressed in Section 3.2 of the EA.
3. The County has responsibility for roadway signage.
4. Alternatives were considered as described in Section 3.2 and 4.10.4 of the EA.
5. Floodplain impacts are described and shown in Section 4.12 of the EA.
6. The FHWA will determine whether significant impacts exist after review and consideration of all public comment and matters contained herein.
7. The U.S. Army Corps of Engineers is the agency responsible for administration of Section 404 of the Clean Water Act. The Corps makes the determination of whether an individual 404 permit is required.
8. Orchard Ridge Road was not prioritized for improvements by the County Commissioners. It is also not on the secondary highway system, thus it is not eligible for state or federal funds.

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OCT 2 1 1996

ENVIRONMENTAL

date 10.16.96

cc: Joel Marshall
Carl Peil

Foy's Canyon Road

COMMENT SHEET

I have the following comments or questions about the Foy's Canyon Road project:

1. Foys Canyon Road does not qualify for 86% federal funding.
2. Modernize the existing roadway to paved County standards.
3. Use signs to reduce speeds and address safety issues.
4. Reduce taking of right-of-way through wetlands, flood plains, and prime farmlands. (Storli Farm)
5. EA does not show impacts on Birch/Patrick Creek confluence (Storli Farm)
6. ~~Stop Action on FONSI.~~ Significant & controversial major impacts not disclosed in EA.
7. Individual 404 permit is needed with public review.
8. Orchard Ridge Rd Residents seem to ~~want~~ be proponents of Foy's Canyon Rd improvement why not save money and improve Orchard Ridge Rd by adding a ½ mile to get over hill instead of 2 and ½ miles of twisted canyon road
9. Orchard Ridge Residents want an end result but seem to have skipped the homework - it won't add up —

Terru Rice

BLUE AND WHITE
MOTEL, INC.
P. O. BOX 249
KALISPELL, MONTANA 59903-0249

O. Comment Form dated October 18, 1996, from Carl Van Valkenburg

1. See response to comment 1 through 7 on Comment Form from the Blue & White Motel.

Joel Marshik

date 10-18-96

MASTER FILE COPY

cc: Carl Peil

RECEIVED

OCT 2 1 1996

Foy's Canyon Road ENVIRONMENTAL COMMENT SHEET

I have the following comments or questions about the Foy's Canyon Road project:

1. Foys Canyon Road does not qualify for 86% federal funding.
2. Modernize the existing roadway to paved County standards.
3. Use signs to reduce speeds and address safety issues.
4. Reduce taking of right-of-way through wetlands, flood plains, and prim farmlands. (Storli Farm)
5. EA does not show impacts on Birch/Patrick Creek confluenc (Storli Far
6. Stop Action on FONSI. Significant & controversial major impacts not disclosed in EA.
7. Individual 404 permit is needed with public review.

Save the Storli family farm!!!

Name Carl Van Valkenburg

Address 2714 Clover Dr Great Falls MT 59404

Phone

(above information is optional)

P. Comment Form dated October 16, 1996, from Tex Jones

1. See response to comment 1 through 7 on Comment Form from the Blue & White Motel.
2. Comment noted.
3. Comment noted. The County sets priorities for roadway improvements.

Joel Marshik
date 10.16.96

MASTER FILE COPY

cc: Jim Weaver
Carl Peil

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Foy's Canyon Road

COMMENT SHEET

I have the following comments or questions about the Foy's Canyon Road project:

1. Foys Canyon Road does not qualify for 86% federal funding.
2. Modernize the existing roadway to paved County standards.
3. Use signs to reduce speeds and address safety issues.
4. Reduce taking of right-of-way through wetlands, flood plains, and prime farmlands. (Storli Farm)
5. EA does not show impacts on Birch/Patrick Creek confluence (Storli Farm)
6. Stop Action on FONSI. Significant & controversial major impacts not disclosed in EA.
7. Individual 404 permit is needed with public review.
8. Waste of tax dollars
9. More needed projects

Tex Jones
10.15.96

Q. Comment Form dated October 16, 1996, from C.J. Van Twest

1. See response to comment 1 through 7 on Comment Form from the Blue & White Motel.

Joel Marshik

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OCT 17 1996
ENVIRONMENTAL

date 10.16.96

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cc: Jim Weaver
Carl Peil

Foy's Canyon Road

COMMENT SHEET

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5. EA does not show impacts on Birch/Patrick Creek confluence (Storli Farm
6. Stop Action on FONSI. Significant & controversial major impacts not disclosed in EA.
7. Individual 404 permit is needed with public review.

Name C. I van Twest

Address P.O. Box 249
Kalispell Mt. 59901

Phone

(above information is optional)

R. Comment Form dated October 16, 1996, from Ann Van Twest

1. See response to comment 1 through 7 on Comment Form from the Blue & White Motel.

Joel Marshik

date 10.16.96

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OCT 17 1996

Foy's Canyon Road ENVIRONMENTAL

COMMENT SHEET

MASTER FILE COPY

CC: Jim Weaver
Carl Peil

I have the following comments or questions about the Foy's Canyon Road project:

1. Foys Canyon Road does not qualify for 86% federal funding.

2. Modernize the existing roadway to paved County standards.

3. Use signs to reduce speeds and address safety issues.

4. Reduce taking of right-of-way through wetlands, flood plains, and prime farmlands. (Storli Farm)

5. EA does not show impacts on Birch/Patrick Creek confluence (Storli Farm)

6. Stop Action on FONSI. Significant & controversial major impacts not disclosed in EA.

7. Individual 404 permit is needed with public review.

Ann van Twest
P.O. Box 249
Kalispell MT 59901

S. Comment Form dated October 13, 1996, from Jamey Fain Willows

1. See response to comment 1 through 7 on Comment Form from the Blue & White Motel.
2. Comment noted.

Joel Marshik

date 10/13/96

MASTER FILE
COPY

cc: Jim Weaver
Carl Peil

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OCT 17 1996
ENVIRONMENTAL

Foy's Canyon Road

COMMENT SHEET

I have the following comments or questions about the Foy's Canyon Road project:

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2. Modernize the existing roadway to paved County standards.
3. Use signs to reduce speeds and address safety issues.
4. Reduce taking of right-of-way through wetlands, flood plains, and prime farmlands. (Storli Farm)
5. EA does not show impacts on Birch/Patrick Creek confluence (Storli Farm)
6. Stop Action on FONSI. Significant & controversial major impacts not disclosed in EA.
7. Individual 404 permit is needed with public review.

Please consider the Storli Family Farm, and others who will be effected. In all the United States the amount of Wetland area is diminished. If the Families & the Wildlife are put first when a new road is considered then we can work with nature by using existing road with improved signs & reduced speeds.

Name Janay Fawn Willows
Address 295 Lake Park Lane, Whitefish Mont. 59937
Phone (406) 862-4894

(above information is optional)

T. Comment Form dated October 14, 1996, from Paul Rose

1. See response to comment 1 through 7 on Comment Form from the Blue & White Motel.

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Joel Marshik
date 10.14.96

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cc: Jim Weaver
Carl Peil

Foy's Canyon Road

COMMENT SHEET

I have the following comments or questions about the Foy's Canyon Road project:

1. Foys Canyon Road does not qualify for 86% federal funding.
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3. Use signs to reduce speeds and address safety issues.
4. Reduce taking of right-of-way through wetlands, flood plains, and prim farmlands. (Storli Farm)
5. EA does not show impacts on Birch/Patrick Creek confluence (Storli Farm
6. Stop Action on FONSI. Significant & controversial major impacts not disclosed in EA.
7. Individual 404 permit is needed with public review.

Name Paul Rose

Address 1225

Phone 5th Ave W. Kalispell

(above information is optional)

U. Letter Received at Carter & Burgess on October 24, 1996, from Paul C. Shelt

1. This regards the changed drainage situation as it relates to the property at 265 Foy's Canyon Road. Appropriate measures will be taken to ensure that the culvert at this location will not cause flooding onto the septic tank drainfield at 265 Foy's Canyon Road.
2. Current maintenance schedules were provided by the County for inclusion in the EA.
3. Property ownership on Figure 4-1 is shown for land directly adjacent to the existing roadway only.

To Gina McAfee;

1. Our main concern pertains to the Wetland Site # one.

2. Our residence is located at approximate Mile Post 4 1/2 mile. The assistment book published by the State of Montana, stated that culvert under the highway at site # one may cause additional water to flow down a natural drainage under our driveway and very close to our septic tank drain field.

You took notes on October 9th in that an engineer from the State would contact me reference this matter.

3. The last two points might be considered to be minor points standing alone, but on a broader scope how many others exist?

a. Reference on page 2 - 19 of the study states that the road was graveled and graded every 2 weeks. That is the biggest joke of the century.

b. Reference page 4 - 1, property on both sides of the project is private and Federal lands. Land directly across from our residence is owned by District 5 School System.

Thank you for your response.

Sincerely,

Paul C. Shelt

Paul C. Shelt
265 Foys Canyon Rd.
Kalispell, Mt. 59901 - 7572
Ph. 406 752 0787

V. Letters dated October 14, 1996, and February 27, 1996, from Richard R. Reynolds

1. Foy's Canyon Road is also known as Secondary Road 503. Thus it is part of the secondary highway system.
2. The traffic counts presented in the EA and at public meetings were provided by MDT. We know of no other published traffic data that conflicts with the MDT data.
3. Section 2.0 Purpose and Need and Section 3.1.2 Preferred Alternative of the EA document discuss the purpose and need for the project and describe the Preferred Alternative.
4. The purpose for the use of federal funds is also described in the enclosed Section 2.0 Purpose and Need of the EA. Wetland impacts will result from implementation of the Preferred Alternative, as described in Section 4.10 Wetlands of the EA.
5. Alternative designs were considered and are described in Section 3.2 of the EA.

Richard R. Reynolds
Post Office Box 8302
Kalispell, Montana 59904

October 14, 1996

Ms. Jeanette Lostracco
c/o Carter & Burgess
Suite 103
113 West Front Street
Missoula, Montana 59802

Dear Ms. Lostracco:

Recently, I received notice of a public hearing for the Foys Canyon Road reconstruction and paving project which was to provide information about the proposed action. The meeting was scheduled for October 9, 1996, at Cavanaugh's at Kalispell Center in Kalispell, Montana.

Unfortunately, I was unable to attend this public hearing due to prior commitments on the East Coast. Nonetheless, my feelings, opinions, and objections about and to this matter - which have been detailed in my previous letters to Carter & Burgess - have not changed.

In the last letter I addressed to you, dated February 27, 1996, I asked several questions about the proposed Foys Canyon Road reconstruction and paving project. To date, I have received no response to any of those questions; I attach a copy of that letter for your information. I would still like to have each of those questions answered - and would appreciate a prompt response from you regarding the issues which I raised in that letter.

I look forward to hearing from you at your earliest convenience.

Thank you very much.

Sincerely yours,

Richard R. Reynolds
(245 Foys Canyon Road;
Kalispell, Montana)

att.

Attachment to Richard Reynold's Letter

P.O. Box 8302
Kalispell, Montana 59904
February 27, 1996

Ms. Jeanette Lostracco
c/o Carter & Burgess
216 16th Street Mall, Suite 1700
Denver, Colorado 80202

Dear Ms. Lostracco:

On February 7, 1996, I attended the Foys Canyon Road Project "public relations workshop" which was conducted at the Outlaw Inn in Kalispell, Montana. I commend the representatives of Carter & Burgess, all of whom conducted themselves in a highly professional manner during that workshop.

Nonetheless, I write this letter to express some of my concerns - and to ask a couple of questions - pertaining to that project.

First, does Foys Canyon Road meet all of the specifications, as spelled out in the state guidelines, to be a secondary road?

Second, according to a recently conducted survey - cited by our attorney - the traffic count on Foys Canyon Road actually has decreased over the past year. The road is not as heavily travelled as was cited in the graphs and statistics presented by the state during the February 7th workshop.

Third, regarding the safety issue which was mentioned during the workshop, precisely what is the state attempting to accomplish by staightening, paving, and widening Foys Canyon Road? In truth, the only fatal accidents which have occurred there are those which have taken place at the straight and paved portions on either end of that road. Logic tells me that the proposed improvements will actually decrease safety on Foys Canyon Road; they will not improve the safety there at all.

Finally, I would appreciate it if someone would explain why federal funds are being used to destroy some of the few remaining wetlands we find in this part of Montana, as well as diminishing the aesthetic beauty of the area. Are you not harming the very environment we are all, supposedly, trying to protect?

As I have stated in previous letters to your office, I would still welcome some kind of design change to the Foys Canyon Road Project which would protect the integrity of the environment - as well as the interests of the property owners along the right-of-way.

I would appreciate hearing from you as soon as possible regarding the above issues.

Thank you very much.

Sincerely yours,

Richard R. Reynolds
(245 Foys Canyon Road;
Kalispell, Montana)

W. Postcard dated October 17, 1996 from W. Storli

1. The "Project Wetland Resource Inventory Impact Assessment" is included in the Biological Resource Report prepared for this project. This report has been mailed as requested.

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int, 6 blocks from Kalispell Center Mall. "Your place for the nite ... is the Blue & White".

Please send me a copy of Project Wetland Resource Inventory Impact Assessment for Foys Canyon Rd; Ref 199690354

Thank you 10.17.96

W. Shuli
3420 Airport
P.O. Box 249
Kalispell MT 59901

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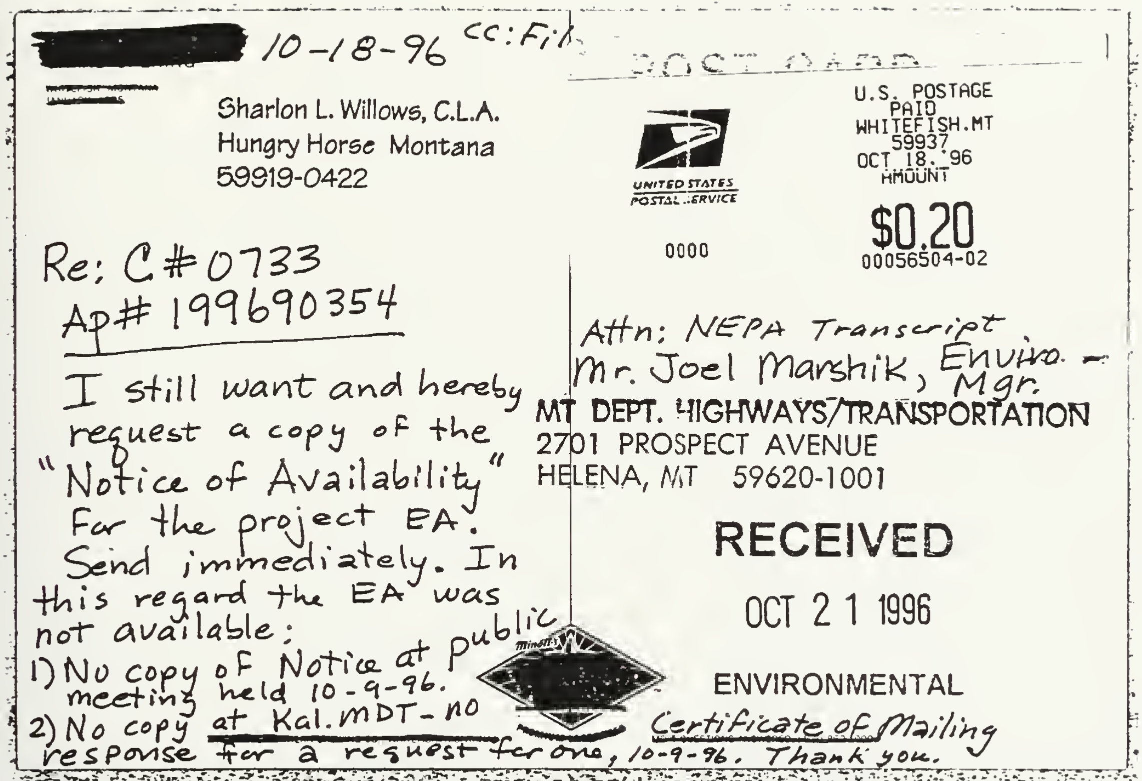
J. Marshall
Environmental Manager
2701 Prospect Ave
Helena
MT 59620

X. Postcard dated October 18, 1996 from Sharlon L. Willows

1. The copy of the Notice of Availability (NOA) has been mailed as requested.
2. There is no requirement to provide a copy of the NOA at a public hearing.
3. The Kalispell MDT was sent a copy of the EA prior to September 16, 1996.
4. The EA document requested from the Carter & Burgess Missoula office by phone call from Sharlon L. Willows on October 2, 1996 was mailed that day to Ms. Willows.



[redacted] 10-18-96 cc: File

Sharlon L. Willows, C.L.A.
Hungry Horse Montana
59919-0422

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Re: C#0733
Ap# 199690354

I still want and hereby request a copy of the "Notice of Availability" For the project EA. Send immediately. In this regard the EA was not available:

1) No copy of Notice at public meeting held 10-9-96.
2) No copy at Kal. MDT - no response for a request for one, 10-9-96. Thank you.

Attn: NEPA Transcript
Mr. Joel Marshik, Enviro. - Mgr.
MT DEPT. HIGHWAYS/TRANSPORTATION
2701 PROSPECT AVENUE
HELENA, MT 59620-1001

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Appendix D

Appendix D

Environmental Assessment - September, 1996

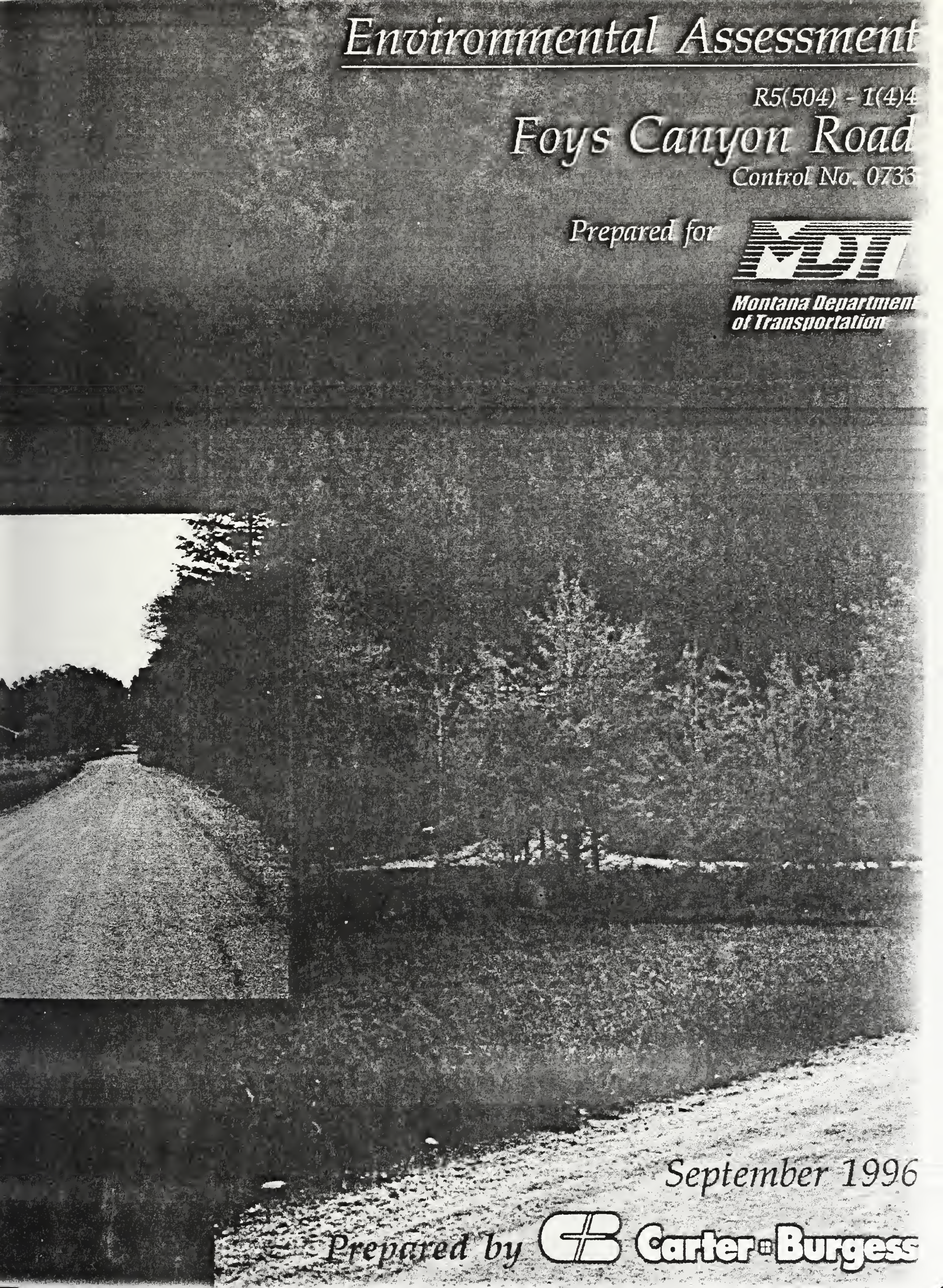
Environmental Assessment

R5(504) - 1(4)4

Foys Canyon Road

Control No. 0733

Prepared for MDT Montana Department of Transportation



September 1996

Prepared by Carter::Burgess

RS (503)-1(4)4
Foys Canyon Road
Control Number 0733

Environmental Assessment

Prepared for:

Montana Department of Transportation

Prepared by:

Carter & Burgess, Inc.

September, 1996

Environmental Assessment

for

RS 503-1(4)4
Foys Canyon Road
Control No. 0733
in
Flathead County

This document is prepared in conformance with MEPA requirements and contains the information required for an Environmental Assessment under the provisions of ARM 18.2.237(2)(3) and 18.2.239. It is also prepared in conformance with NEPA requirements for an Environmental Assessment under 23 CFR 771.119.

Submitted Pursuant to 42 USC 4332(2)(c)
and Sectors 2-3-104, 75-1-201 M.C.A.
by the
U.S. Department of Transportation
Federal Highway Administration
and the
Montana Department of Transportation

Submitted by: ______________________ Date: 9/10/96
Montana Department of Transportation
Environmental Services

Reviewed and Approved
for Distribution: ______________________ Date: 9/11/96
Federal Highway Administration
For Division Administrator

The following persons may be contacted for additional information concerning this document:

Joel M. Marshik, P.E.
Manager - Environmental Services
Montana Department of
Transportation
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

Janice W. Brown, Administrator
Region #8, Montana Division
Federal Highway Administration
301 South Park, Drawer #10056
Helena, Montana 59626-0056

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Executive Summary

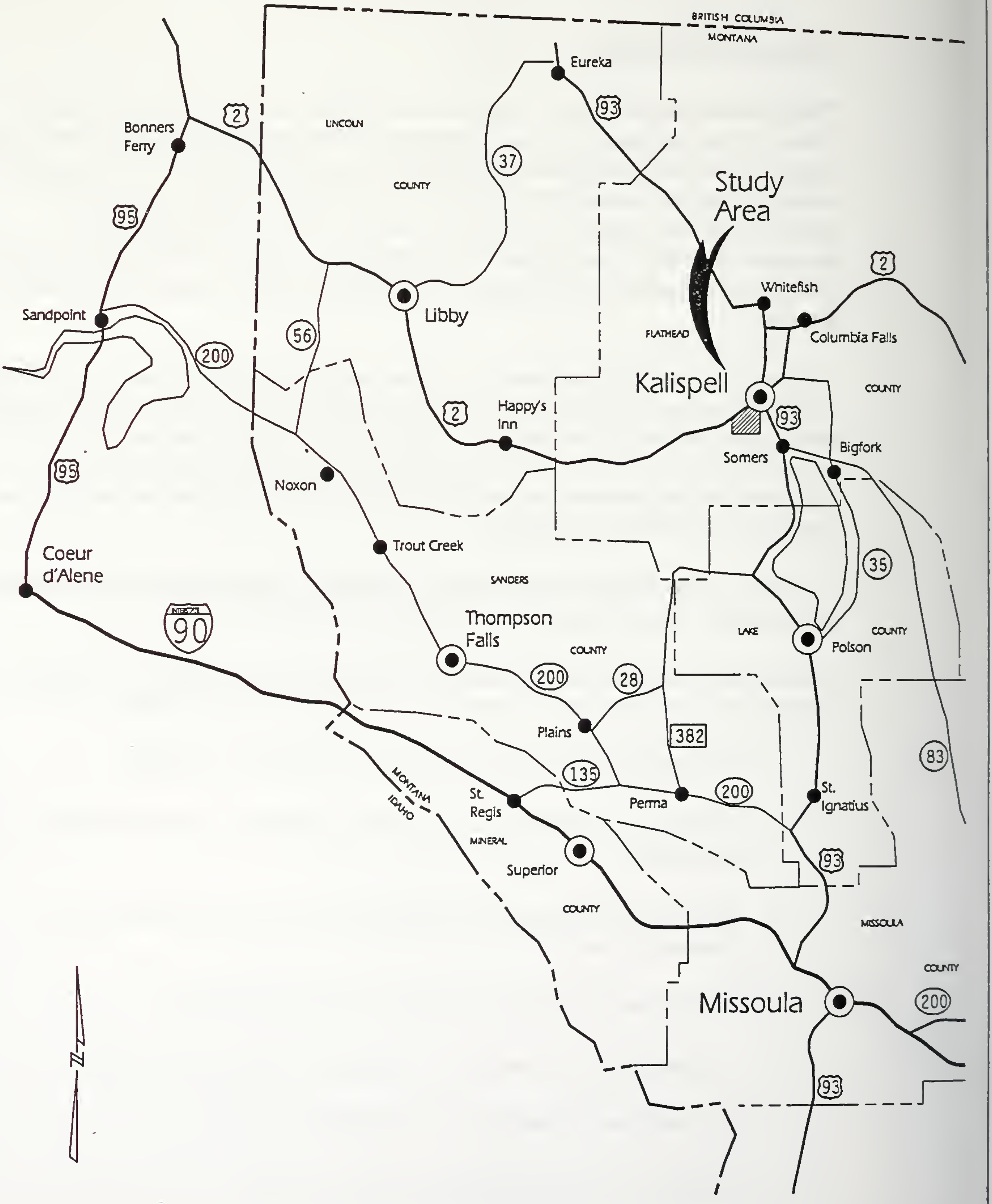
The Montana Department of Transportation (MDT), as advised by the Flathead County Commissioners, proposes to upgrade 6.1 kilometers (3.8 miles) of Foys Canyon Road located directly southwest of Kalispell, Montana (Figure 1-1). The proposed action will include widening the existing road, providing adequate clear zones, upgrading existing alignment, providing a paved surface, and improving the intersections at Birch and Patrick Creeks (Figures 1-2 and 1-3). The entire length will be a two-lane roadway with 3.6-meter (12-foot) lanes and 0.6-meter (2-foot) paved shoulders.

The project need is demonstrated by an abnormally high accident rate coupled with a projected increase in traffic volume on the existing roadway. Over the past ten years, the accident rate on the unimproved section of Foys Canyon Road has been nearly seven times greater than the statewide average. The Preferred Alternative is considered an improvement project designed to address the immediate safety issues associated with Foys Canyon Road.

A number of alternatives were developed during the design process and in response to public issues. These alternatives are discussed in Section 3.1.

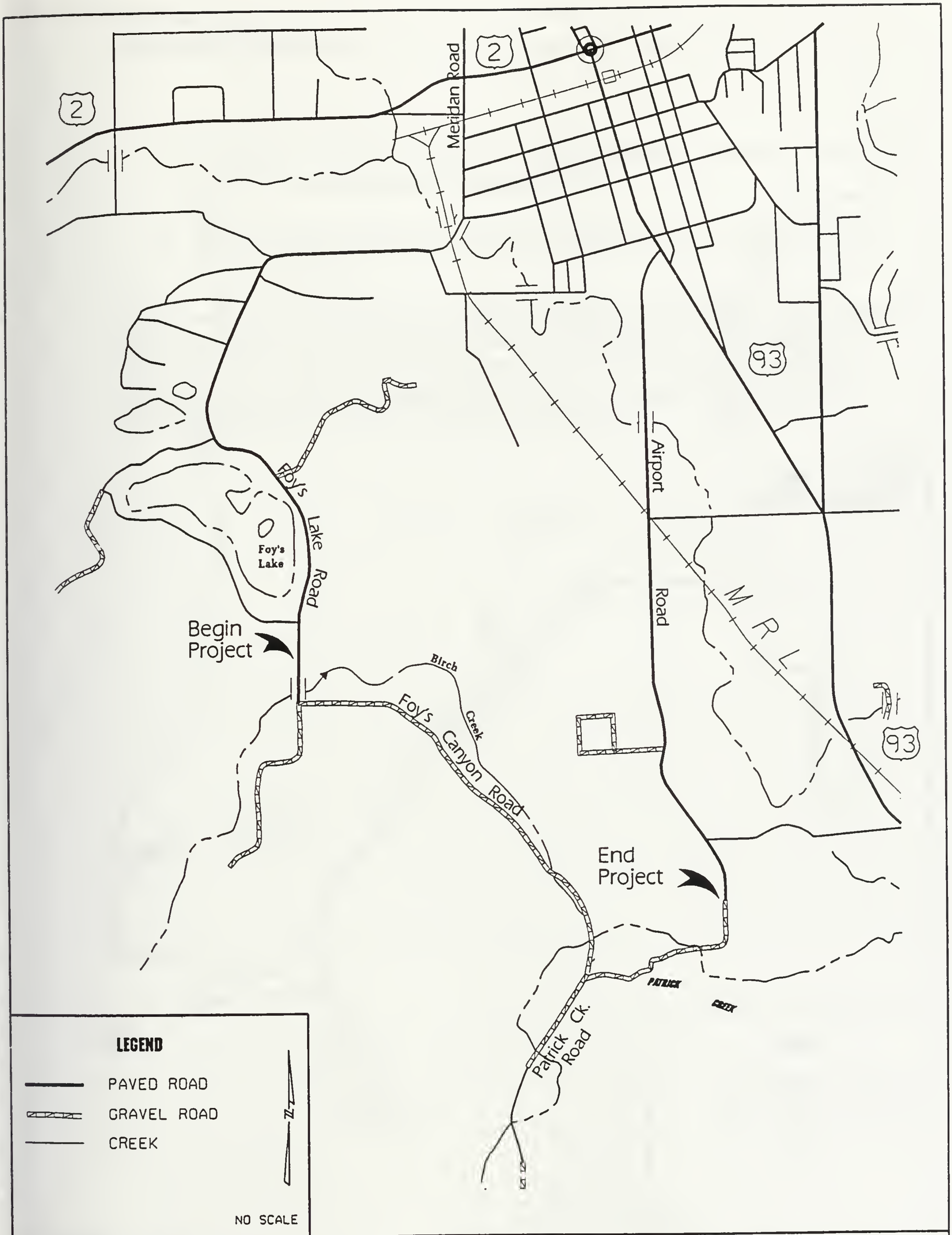
An assessment of environmental impacts of the Preferred Alternative is included in Chapter 4 of this document. A summary of the major findings follows:

1. The Preferred Alternative will decrease accident probability.
2. The Preferred Alternative will increase emergency response efficiency and accessibility.
3. The Preferred Alternative will improve air and visual quality due to a decrease in dust.
4. Visual changes will occur, including the removal of trees.
5. Approximately 0.82 hectares (2.04 acres) of wetlands will be filled.
6. Encroachment on the 100-year floodplain will occur.
7. Impacts to wildlife and fisheries habitat will occur.



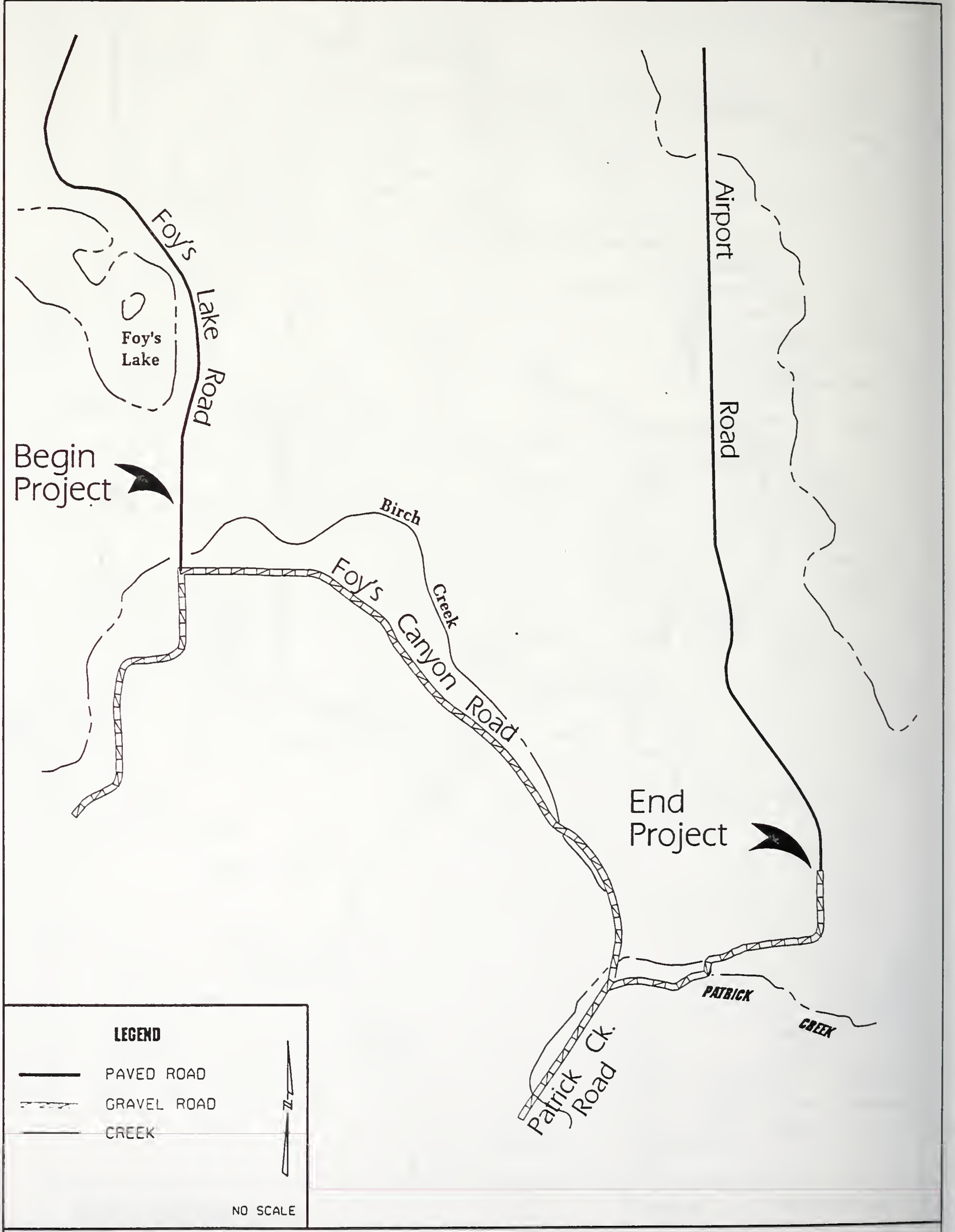
FOY'S CANYON ROAD

REGIONAL MAP
Figure 1-1



FOY'S CANYON ROAD

VICINITY MAP
Figure 1-2



FOY'S CANYON ROAD

AREA MAP
Figure 1-3

8. Short-term construction impacts include increased dust emissions, removal of vegetation, and temporary increases in noise.

9. The Preferred Alternative will provide improved access to local home and business owners.

Public coordination has included two public workshops, two newsletters, paid meeting announcements in the local newspaper, and two briefings with the Flathead County Commissioners. Consultation with affected federal and state agencies regarding project impacts was also completed and documented. A public hearing will be held following completion of this Environmental Assessment.

1.0 Description of Proposed Action

1.1 Study Area Description

The project study area is located approximately 3.22 kilometers (2 miles) southwest of the City of Kalispell in Flathead County, Montana. (See Figures 1-1 and 1-2). The proposed project, hereafter referred to as "Foys Canyon Road", is located along a 6.1 kilometer (3.8 mile) segment of Secondary Highway 503. The proposed project begins at a point on Foys Lake Road, approximately 305 meters (1000 feet) north of the intersection with Foys Lake Road and Foys Canyon Road at kilometer 6.1 (milepost 3.8) and ends at the intersection of Glacier Ranch Road at kilometer 12.2 (milepost 7.6). At the project endpoint, the road name changes to Airport Road.

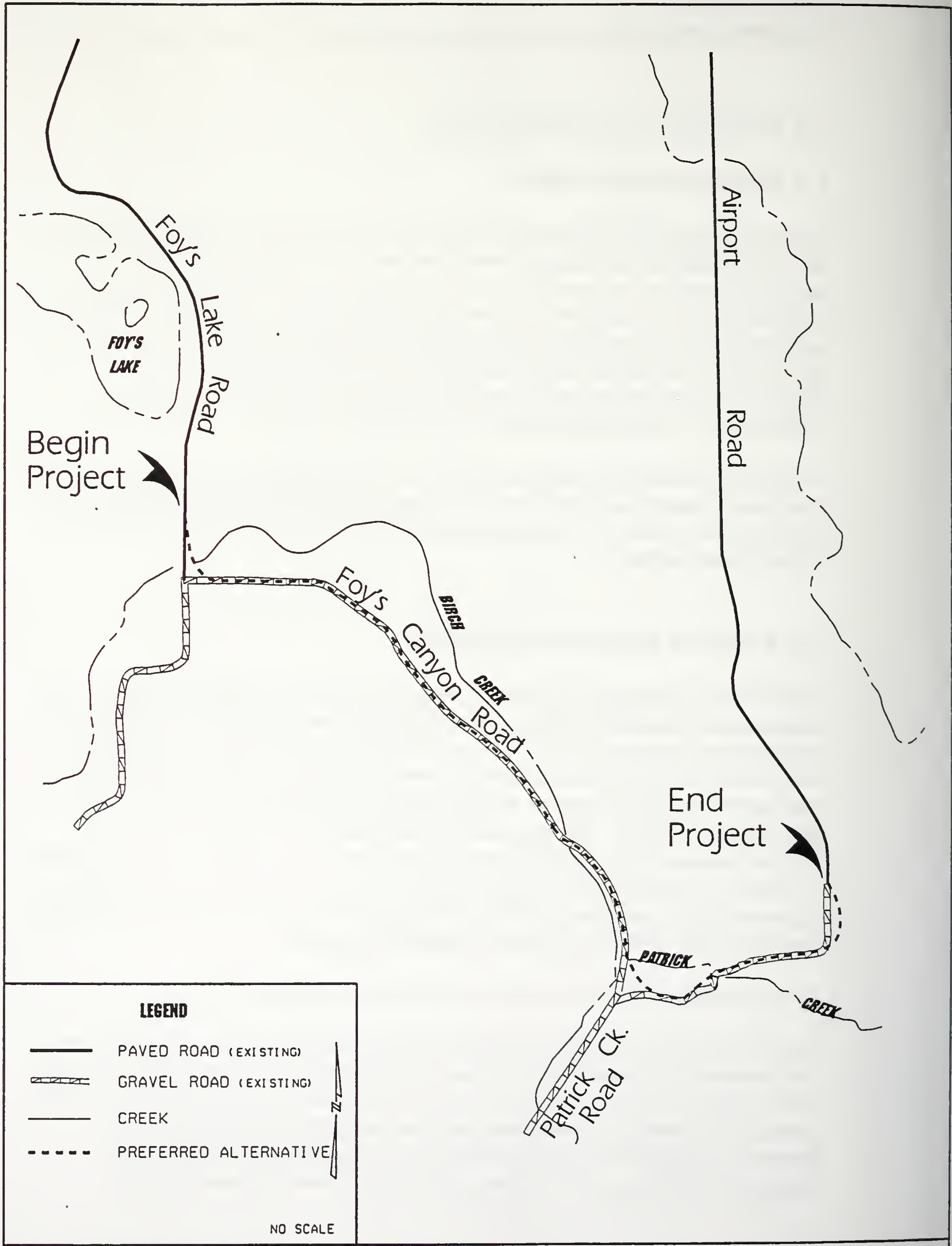
Foys Canyon Road is the middle segment of Secondary Highway 503, with Foys Lake Road and Airport Road at each end of the segment. Foys Canyon Road has a 6 meter (20 feet) gravel surface. Foys Lake Road and Airport Road have 7 to 9 meter (24 to 28 feet) paved surfaces.

1.2 Preferred Alternative Description

The Preferred Alternative consists of a design to secondary roadway standards. This includes improvements to achieve a 64 kph (40 mph) design speed. The alignments (horizontal and vertical) and the off-road characteristics (clear zone and side slopes) meet County and State requirements for provision of sight distance. The Preferred Alternative generally follows the existing alignment with larger curves replacing the existing tight curvature. The proposed vertical grades are all below seven percent. The side slopes of the Preferred Alternative will provide 6:1 slopes for approximately 2.4 meters (8 feet) beyond the edge of traveled way. These flatter slopes provide an opportunity for out-of-control vehicles traveling off the road to recover by providing a traversable slope with no permanent obstacles in the path.

The alignment of the Preferred Alternative is shown on Figure 1-4.

These improvements minimize accident potential by increasing driver visibility, and they maximize the opportunity for drivers to regain control of errant vehicles on and off the roadway surface. Results will likely improve safe roadway operations. Traffic growth can be handled without decreasing the existing Level of Service (LOS). Because no passing zones will be provided, the roadway will not experience an increase in vehicle capacity. Roadway dust will be abated by a paved surface.



FOY'S CANYON ROAD

PREFERRED ALTERNATIVE
Figure 1-4

Following is a summary of the major features of the Preferred Alternative:

- Widen the traveled way to provide two 3.7-meter (12-foot) lanes with 0.6-meter (2-foot) paved shoulders, thus providing additional width for errant vehicle recovery.
- Provide for a clear zone (width varies dependent on the side slope) which will increase the probability of errant vehicles returning to the traveled way without overturning or hitting a fixed object.
- Upgrade the alignment to improve stopping sight distance and reconstruct curves consistent with the proposed design speed of 64 kph (40 mph).
- Improve intersections with Birch Creek and Patrick Creek consistent with a 90 degree tee-intersection with stop sign control, resulting in improved sight distance for approaching vehicles.

2.0 Purpose and Need for Action

2.1 Introduction and Background

2.1.1 Introduction

The purpose of this project is to upgrade the Foys Canyon Road to Montana secondary roadway standards and to provide safer traffic operations along the County roadway system. These improvements will:

- Reduce existing high rate of accidents.
- Provide a facility which is constructed to current design standards.
- Provide a consistent, secondary roadway design between the Foys Lake and the Airport Roads (beginning and ending sections of Secondary Highway 503).

The project is the middle section of Secondary Highway 503 (S 503), a circular route southwest of Kalispell in Flathead County, Montana from kilometer 6.1 to 12.2 (milepost 3.8 to 7.6) (see Figure 2-1). Outside the limits of the Kalispell Urban Area, S 503 provides a route through heavily-forested lands with some pasture and open meadow areas. The land is transitioning from its past primary use as timber and farm land to incorporate rural and suburban tract development.

The existing Foys Canyon Road is characterized by relatively low traffic volumes and a high rate of accidents -- nearly seven times higher than the statewide average for secondary roadways. General traffic growth on this major collector, constructed to older, rural standards, will continue to exacerbate the number and frequency of accidents. Additionally, the County Road Department responsible for maintaining the road is stretched to maintain an adequate gravel surface during non-winter seasons.

2.1.2 Background

In 1984, the Flathead County Commissioners identified Foys Canyon Road as the third priority for county roadway improvements to the Montana Department of Transportation (MDT). The project consisted of improving Foys Canyon Road, S 503 between kilometer 6.1 and 12.2 (milepost 3.8 and 7.6). The County's 1989 update to the priority list restated the Foys Canyon Road as needing improvement, this time as the second priority in the County.

The MDT administers improvements to secondary roadways involving Federal Aid throughout Montana. MDT requests that each county prioritize the secondary roadways needing improvements within their jurisdiction. This allows the local government to determine where federal and state monies should best be allocated. Each county receives an annual allotment and may accumulate the monies until adequate funds are available for project construction, including right-of-way acquisition and utility relocations. The MDT provides the technical support to develop design, environmental clearances, right-of-way needs, and utility issues. The MDT then administers construction and the county is responsible for maintenance of the secondary roadway.

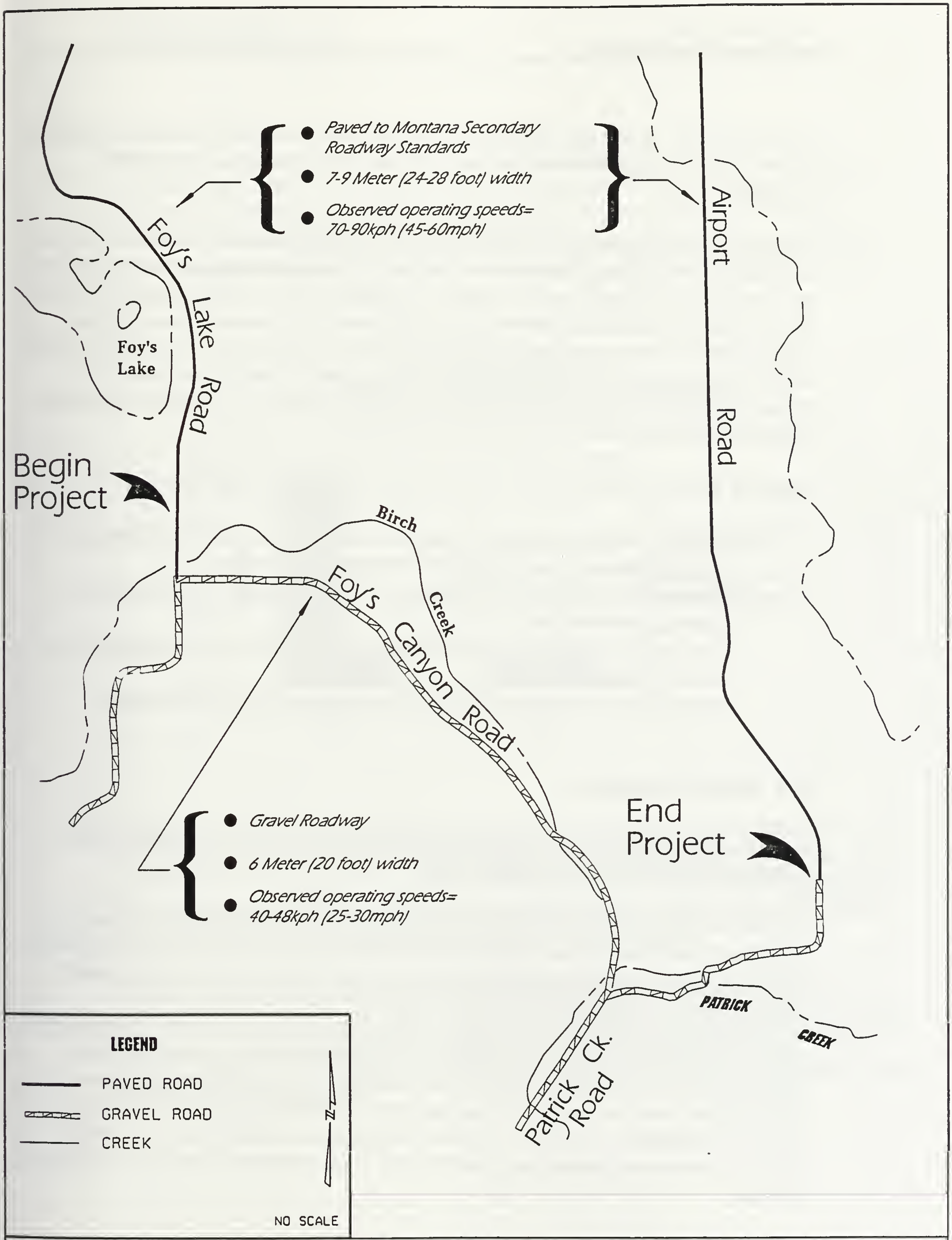
The project must be designed to secondary roadway standards in accordance with MDT Geometric Design Standards, dated December 4, 1992 (updated for metric units in 1994) to receive federal funds. This Environmental Assessment is based on survey, design and environmental work completed in English units, and will be completed in both metric and English units (English shown in parenthesis).

A National Environmental Policy Act (NEPA) Categorical Exclusion document was completed and signed by the Federal Highway Administration (FHWA) in 1986. Based on the approved Categorical Exclusion, MDT prepared a roadway design in accordance with federal, state and county standards for a 64 kph (40 mph) design speed, and right-of-way acquisition was started in 1992.

Because of the age of the previous NEPA document for this project (ten years), this Environmental Assessment (EA) will serve to update the Categorical Exclusion for S 503, the Foys Canyon Road section.

2.2 Overview of Purpose and Need

S 503 is a 16 kilometer (10 mile) circular route traversing agricultural, timber, residential, and recreational lands southwest of Kalispell. The existing road was informally constructed by Flathead County to provide a 6-meter (20-foot) wide gravel roadway section. The beginning and end sections of S 503 (Foys Lake and Airport Roads) have since been upgraded to approximate Montana secondary roadway standards, with a design speed exceeding 80 kph (50 mph) and a paved, 7- to 9-meter (24 to 28-foot) surface (see Figure 2-1). Design speed is the maximum safe speed that can be maintained over a specified section of highway when conditions are so favorable that the design features of the highway govern.



- *Paved to Montana Secondary Roadway Standards*
- *7-9 Meter (24-28 foot) width*
- *Observed operating speeds= 70-90kph (45-60mph)*

- *Gravel Roadway*
- *6 Meter (20 foot) width*
- *Observed operating speeds= 40-48kph (25-30mph)*

FOY'S CANYON ROAD

EXISTING ROAD CONDITIONS
Figure 2-1

Foys Canyon Road currently provides a winding, narrow roadway with approximately 6 meters (20 feet) of gravel travel surface. A number of substandard conditions presently exist.

The existing road provides no shoulders, no passing opportunities, poor sight distances, few pullouts for vehicle breakdowns or for recovery during emergency maneuvers, and no recovery zone adjacent to the roadway, especially if other vehicles are on the road. With virtually no shoulders, drivers have no opportunity to recover control of the vehicle before hitting obstacles or traversing unrecoverable slopes. The terrain is hilly, with over 105 meters (350 feet) of elevation change within the project limits. In winter, the steep vertical grades combine with cold temperatures along with snow and shade from adjacent trees to produce icy conditions.

Roadway features contributing to these substandard conditions include:

- Narrow, winding roadway lacking shoulders for recovery, emergency parking, and/or adequate space for bicycle and pedestrian safety.
- Substandard alignment resulting in poor sight distances and essentially no passing opportunities.
- Inadequate side slopes or open areas that would serve as a recovery area for errant vehicles.
- Essentially no protection (guardrail) in areas with steep side slopes.

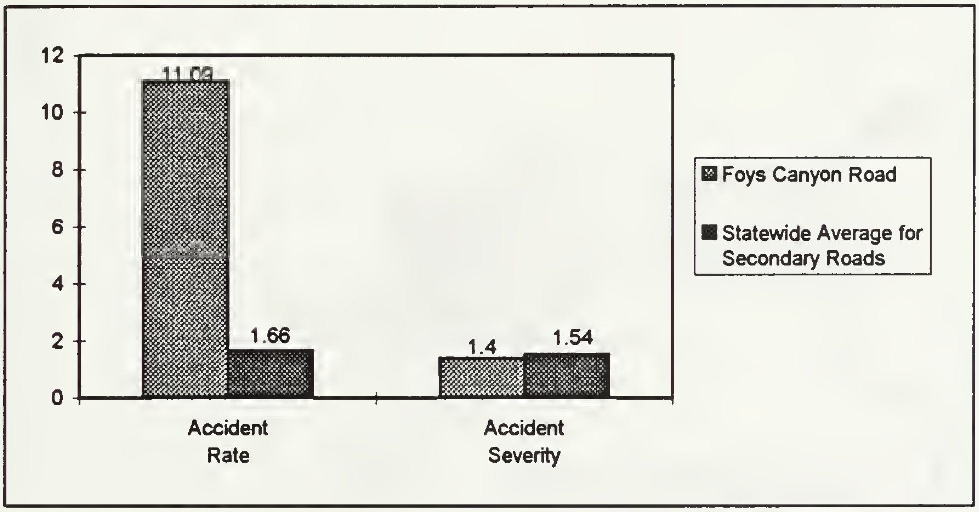
2.3 Safety Problems

Analysis of the past ten years of recorded accident data for the Foys Canyon Road identified deficiencies in the present road.

The physical features of Foys Canyon Road affect safety by influencing the ability of the driver to maintain vehicle control, determining the number and types of conflicts, determining the consequences of an out-of-control vehicle, and influencing overall driver behavior. These physical features include road cross-section, access characteristics and geometric conditions. Some factors, such as vehicle characteristics, have changed over the years to redefine the relationship between safety and road design so that once-accepted design is now outdated. Design improvements on the Foys Canyon Road can not only reduce accident rates but potentially lessen the severity of accidents. If corrective improvements are not implemented and traffic volumes continue to increase as projected, the rate and severity of accidents will likely increase.

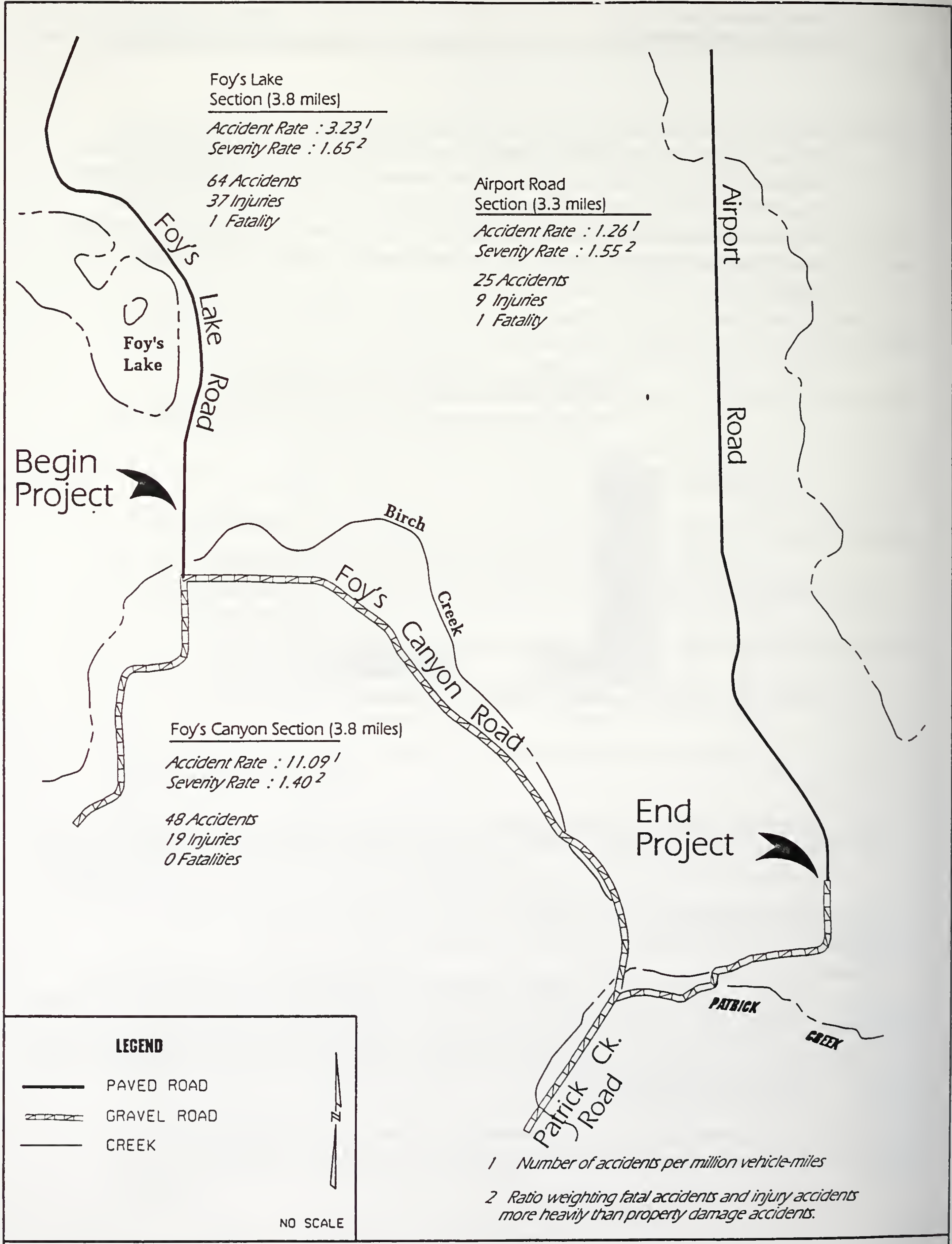
The accident rate on the Foys Canyon Road section is 11.09 accidents per million vehicle-miles, nearly seven times the state average of 1.66 for secondary roadways. The vehicle severity rate on Foys Canyon Road is 1.4, somewhat less than the statewide average of 1.54. (Vehicle severity is a ratio weighting fatal accidents and injury accidents greater than property-damage-only accidents.) (See Table 2-1 and Figure 2-2.)

Table 2-1
Accident Rate and Accident Severity Information



These rates reflect only the accidents reported to authorities. Public comment obtained from the public meetings (see Appendix A) indicated that a large number of accidents occur that are not reported, primarily resulting from vehicles traveling off the roadway surface due to snowy, slick conditions or due to driver error combined with a limited roadway (narrow roadway and no recovery zone).

Table 2-2 illustrates the accident rates and traffic volumes on Foys Canyon Road compared to the adjoining section of S 503. The accident rate on Foys Canyon Road is 3.4 to 8.8 times the rate on the Foys Lake or Airport Road section of S 503. This is a striking comparison to the traffic volumes on this section, which are substantially lower than the adjoining sections.



Foy's Lake Section (3.8 miles)

Accident Rate : 3.23 [1]
Severity Rate : 1.65 [2]

64 Accidents
37 Injuries
1 Fatality

Airport Road Section (3.3 miles)

Accident Rate : 1.26 [1]
Severity Rate : 1.55 [2]

25 Accidents
9 Injuries
1 Fatality

Foy's Canyon Section (3.8 miles)

Accident Rate : 11.09 [1]
Severity Rate : 1.40 [2]

48 Accidents
19 Injuries
0 Fatalities

[1] *Number of accidents per million vehicle-miles*

[2] *Ratio weighting fatal accidents and injury accidents more heavily than property damage accidents.*

FOY'S CANYON ROAD

1985-1994 ACCIDENT CONCENTRATIONS BY ROADWAY
Figure 2-2

Table 2-2
Accident Rates on S 503

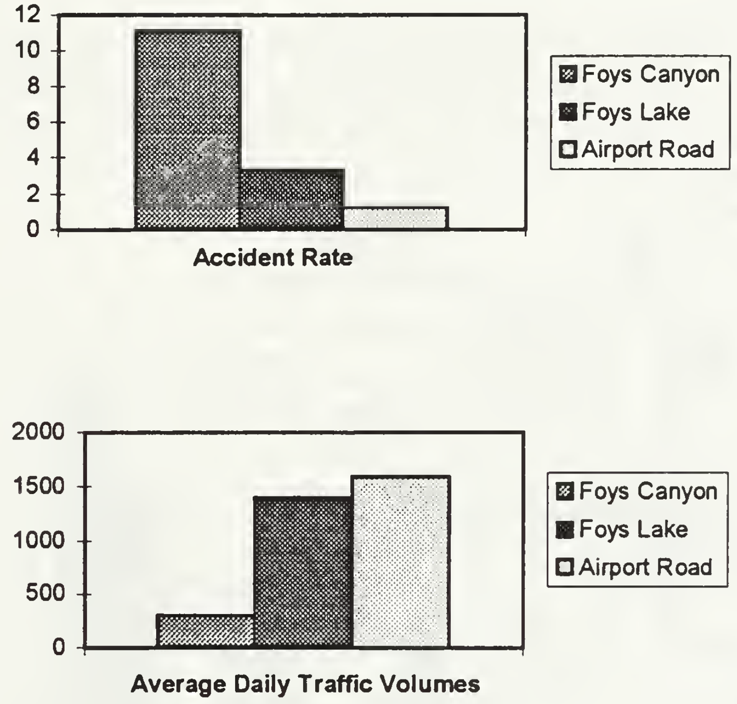
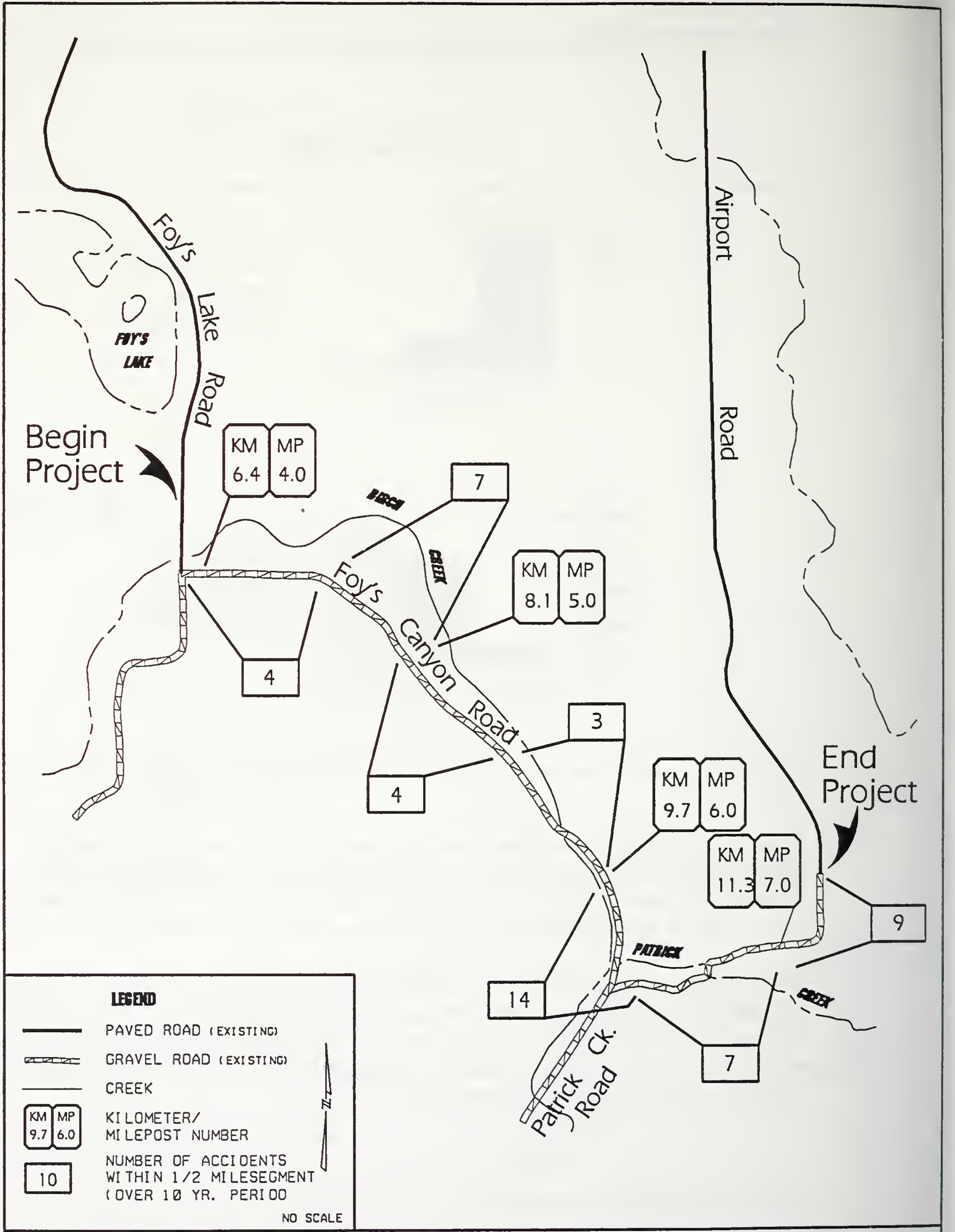


Figure 2-3 illustrates the accident locations along the Foys Canyon Road stretch. Seventy percent of the total number of accidents occur within a two-mile section between kilometers 9.0 and 12.2 (mileposts 5.6 and 7.6), where Foys Canyon opens into a meadow at the confluence of the Patrick and Birch Creek drainages.

The roadway in this accident-prone segment is characterized by tight curves with sight distance frequently limited by the curvature and/or off-road obstacles (usually trees). This two-mile section is intermittently forested which compounds icy conditions in the winter. This section of roadway also has seen an increase in residential development, with direct access from Foys Canyon Road.



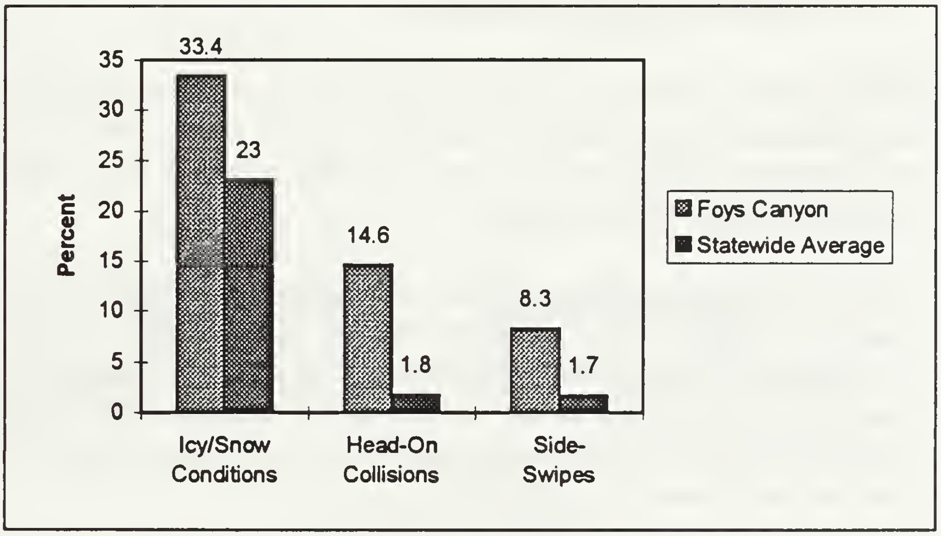
FOY'S CANYON ROAD

ACCIDENT LOCATIONS BY 0.5 MILE SEGMENTS
Figure 2-3

Table 2-3 illustrates the types of accidents occurring along Foys Canyon Road compared to the statewide averages. As shown, the percentage of accidents occurring along Foys Canyon Road are:

- Higher than the statewide average for icy/snowy conditions.
- Higher than the statewide average for head-on collisions.
- Higher than the statewide average for side-swipes.

Table 2-3
Types of Accidents



A summary of the Foys Canyon Road accident data provides the following conclusions:

- Given the traffic volumes, the Foys Canyon Road section of S 503 has a very high number of accidents (48) over a ten-year period.
- No fatal accidents occurred within the ten-year period.
- One-third of the recorded accidents occurred during icy/snowy conditions.
- A significant number of accidents occur within the final 3 kilometer (two mile) section of the project, including:
  - 70 percent of the total number of project accidents,
  - all seven head-on accidents,
  - all four sideswipe accidents, and
  - both accidents with tractor/trailer units.

2.4 Roadway Deficiencies and Relationship to Design Standards

Widening of the existing road, providing a paved surface, providing a clear zone for recovery on the shoulder and adjoining cross-slopes, and improving geometrics would be expected to reduce the accident rate. The current high accident rate indicates that the narrow road section and the limited clear zone (side visibility) encourages vehicles to utilize the center of the road, rather than a designated lane. Statistics show that improvements such as widening the roadway, providing striping on the paved surface, and improved clear zone visibility help reduce these accident causes.

2.4.1 Shoulder and Lane Widths

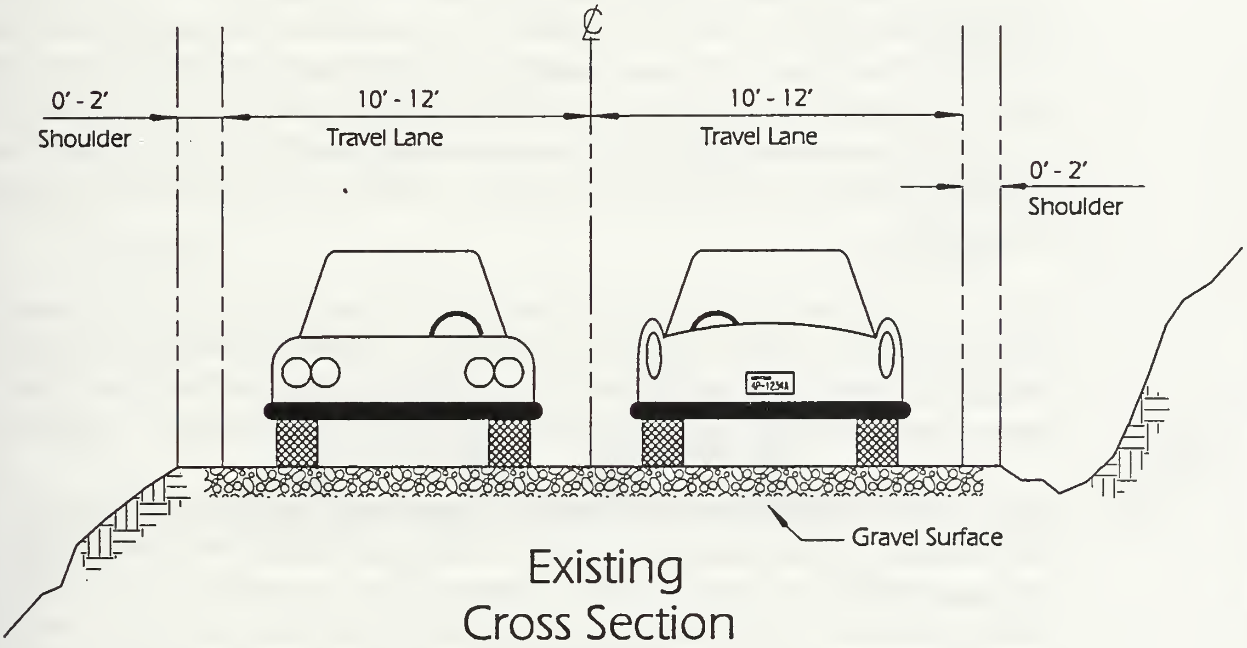
The narrow roadway encourages encroachment into the opposing lanes, resulting in head-on accidents or vehicles that are forced off the roadway. Any bicycle, equestrian or pedestrian traffic may force traffic into the opposing lane to travel around these other travelers (see Figure 2-4).

Traffic accident analysis indicates that accidents (sideswipes, head-on accident and single vehicle accidents) are consistently attributable to the narrow lanes and lack of shoulders. Fourteen percent of the accidents in the ten-year period were head-on, 8 percent were sideswipe accidents and over 55 percent of the accidents on Foys Canyon Road were single vehicle accidents. Wider travel lanes would be a factor in reducing head-on and sideswipe accidents.

The narrow shoulder and lane widths negatively affect the response time for providers of emergency services.

2.4.2 Alignment

Roadway alignment is a composite of curvature and sight distance, or the driver's ability to perceive and react to driving hazards typical on an access-type roadway such as Foys Canyon Road, including the need to decelerate for turning vehicles. Traffic safety can be enhanced by flattening curves, as well as widening the lane or shoulder width or providing sight distance for conditions on the roadway ahead (such as a turning vehicle).



FOY'S CANYON ROAD

EXISTING TYPICAL SECTION
Figure 2-4

2.4.3 Side Slopes and Clear Zone

The roadway environment, including steep slopes and fixed objects, affect both the likelihood that an accident will occur and the severity of the accident. Figure 2-4 illustrates the current roadway cross-section exhibiting these characteristics.

Accident data for the past ten years show that 33 percent of all accidents resulted in a vehicle overturning, while 30 percent of the accidents resulted in a vehicle striking a fixed (off-road) object. Also, 30 percent of the accidents were attributed to limited visibility by the driver. All these conditions result from the existing roadway design which provides no clear zone and substandard sight distance. The clear zone is the gradually-sloped area adjacent to the traveled way that has no fixed objects and provides a recovery area for errant vehicles. Figure 2-5 illustrates the proposed typical cross-section.

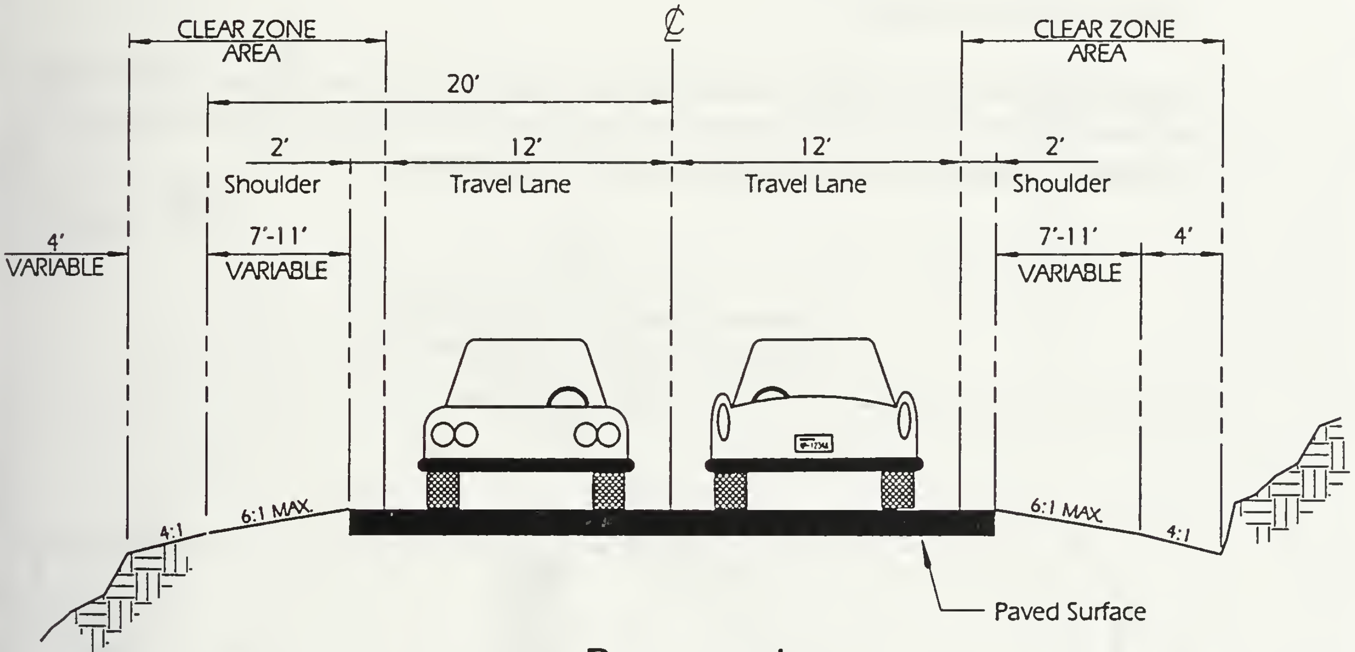
Once a vehicle has left the traveled lane it is up to the driver to regain control of the vehicle and direct it back onto the traveled lane. When encroachments prevent drivers from regaining control, accidents occur. In the Foys Canyon Road area, these encroachments include such objects as trees, fences, steep slopes or large rocks.

MDT design criteria for a rural two-lane cross-section establishes minimum clear zone widths based on the design needs. For the proposed 60 kph (40 mph) design and the projected traffic, the minimum clear distances vary depending on the side slope and roadway curvature. The clear zone is the distance from the edge of a traveled way to encroachment by a fixed object, including the shoulder and the ditch or fill slope. The clear zone must be free of large vegetation, large rocks, structures, and steep slopes. Only vegetation that is small in diameter [under 10 centimeters (4 inches)] and would not grow to a height that would obscure sight distance is allowed in the clear zone. Generally, this includes only grasses and small shrubs.

In the study area, the clear zone is typically non-existent. The proposed clear zone would be 3 to 5.1 meters (10 to 17 feet).

2.5 System Linkage

Improvements to the Foys Canyon Road portion of S 503 will serve to connect two highway segments which have been improved to secondary roadway standards. Drivers expect that a secondary highway will provide an adequate travel surface with consistent



Proposed Cross Section

FOY'S CANYON ROAD

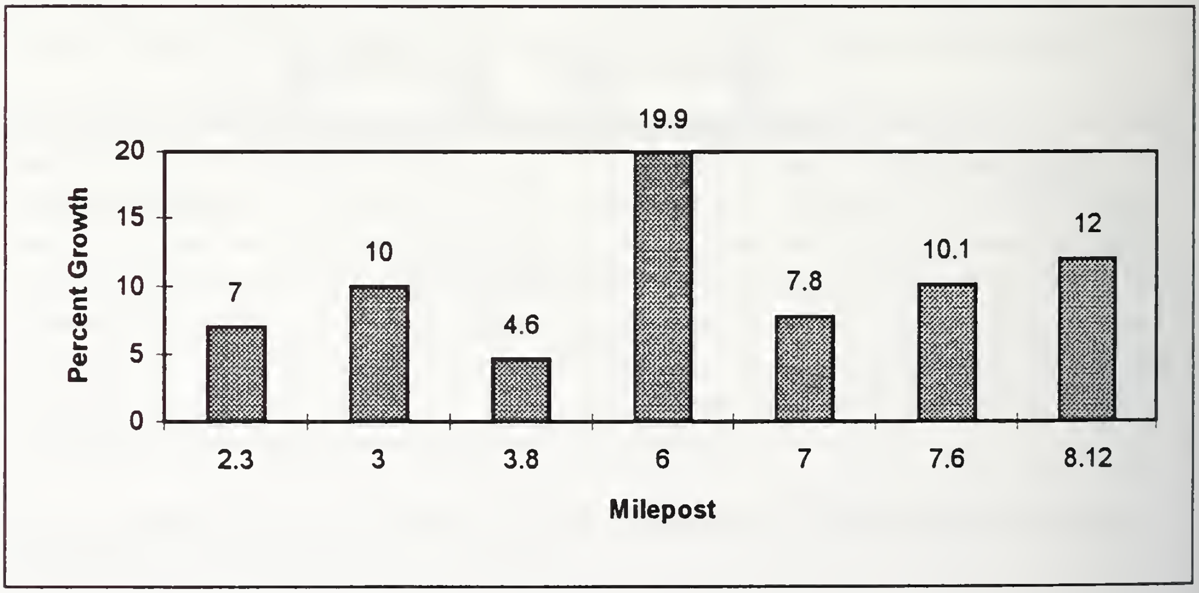
PROPOSED TYPICAL SECTION
Figure 2-5

design features throughout its length. The Foys Lake Road and Airport Road sections provide good sight distance, gradually curving alignments and geometry consistent with a higher-speed roadway [60 kph (40 mph)] or greater. As traffic volumes increase on S 503, the discrepancy between the improvements to Foys Lake Road/Airport Road and the currently unimproved Foys Canyon Road may result in greater driver error and increase in accidents (see Figure 2-6).

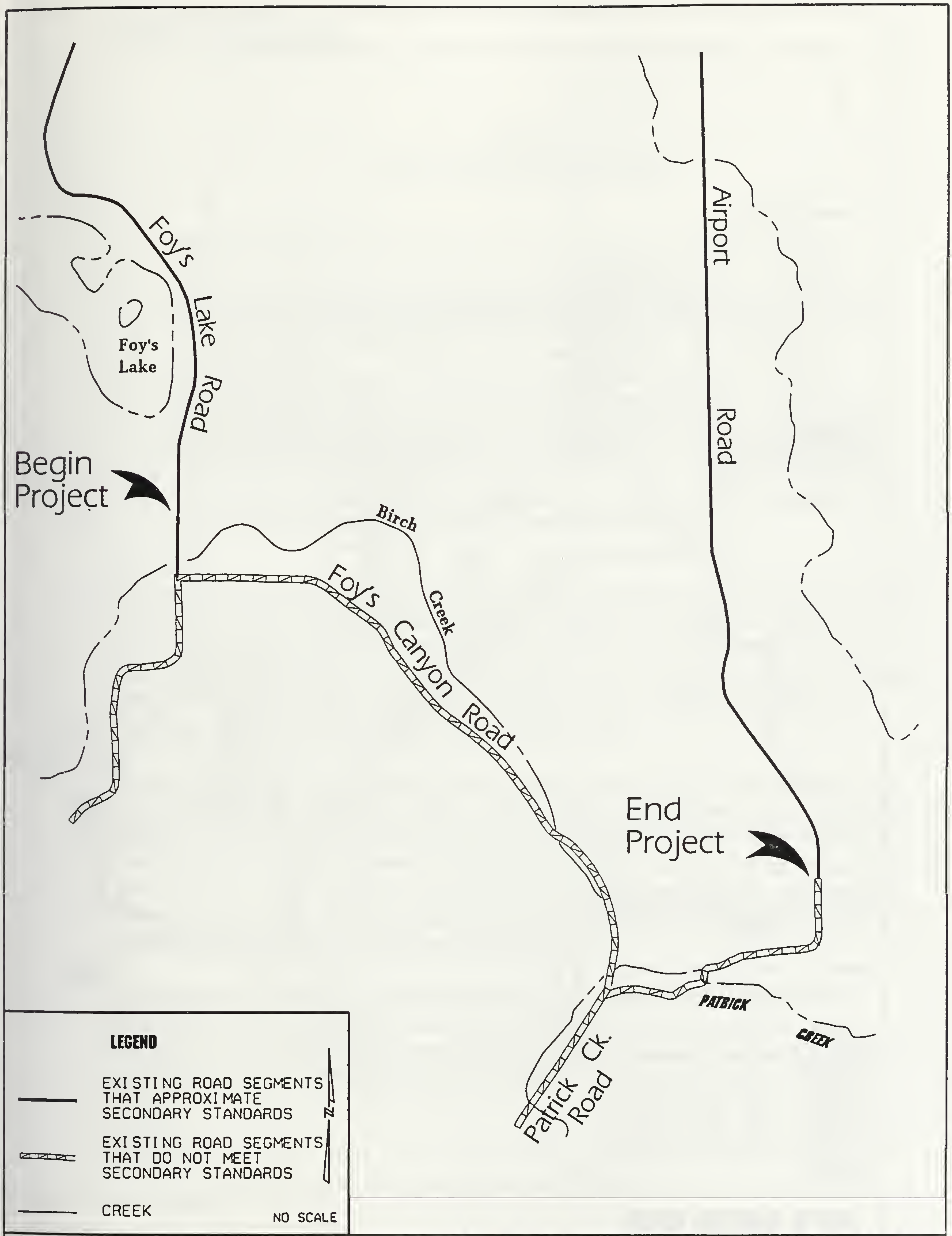
2.6 Traffic Volumes

Historical increases in traffic volumes for the study area (for the period 1989 to 1994) are shown in Table 2-4. The highest increases occurred in the area at the south end of the canyon, where the most residential growth has occurred.

Table 2-4
Historical Growth in Traffic Volumes
Annual Growth Rate for 1989 to 1994

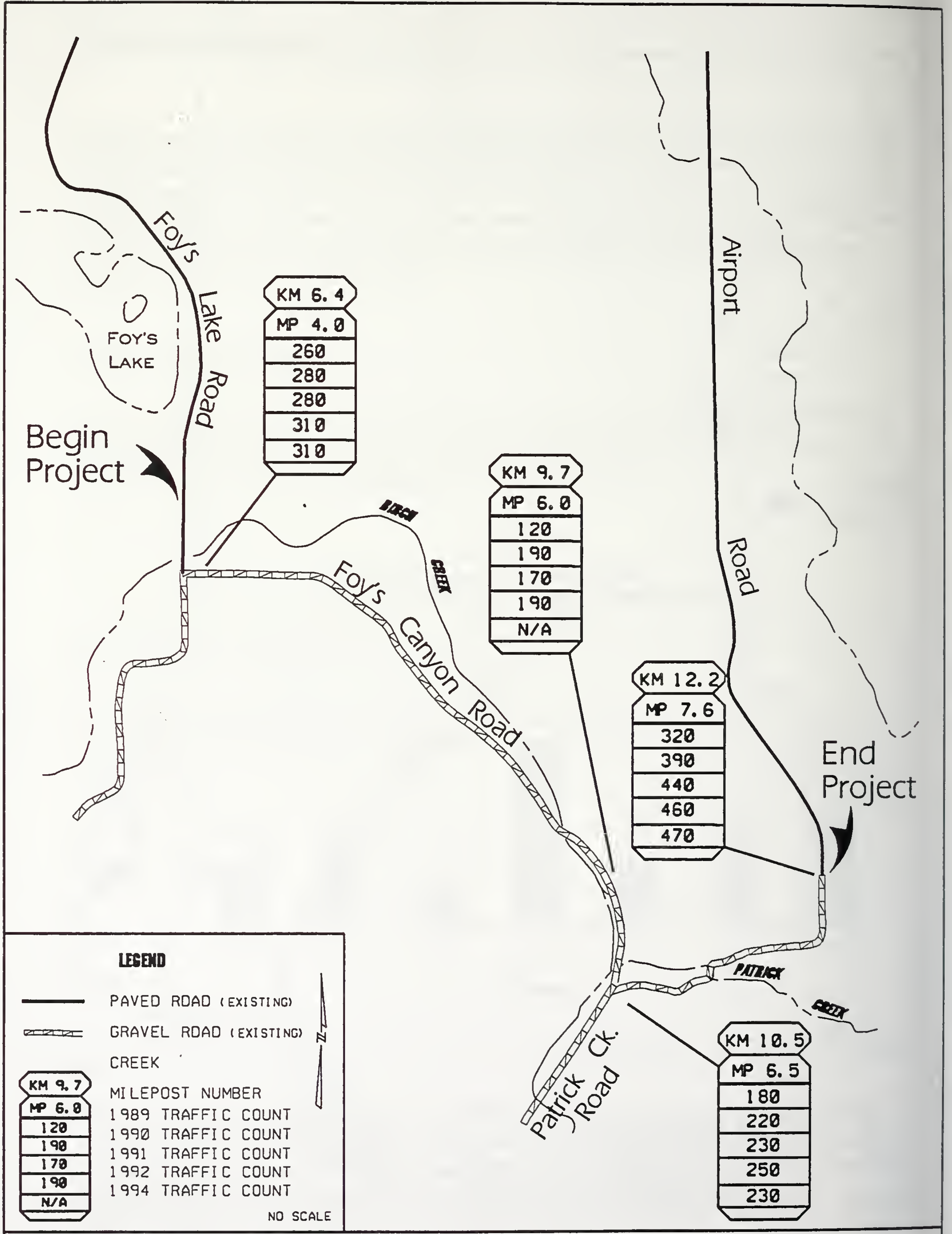


Identifying the historic traffic growth patterns of the area allow for projections to be made to guide the design to accommodate the next 20 years of traffic growth. In order to determine the growth rate to the year 2015, historic data was analyzed between 1989 to 1994 and between kilometers 6.1 to 12.2 (mileposts 3.8 to 7.6), as shown in Table 2-5 below and in Figure 2-7.



FOY'S CANYON ROAD

SYSTEM LINKAGES
Figure 2-6



FOY'S CANYON ROAD

HISTORICAL TRAFFIC COUNTS
Figure 2-7

Table 2-5
S 503 Average Traffic Growth Rates

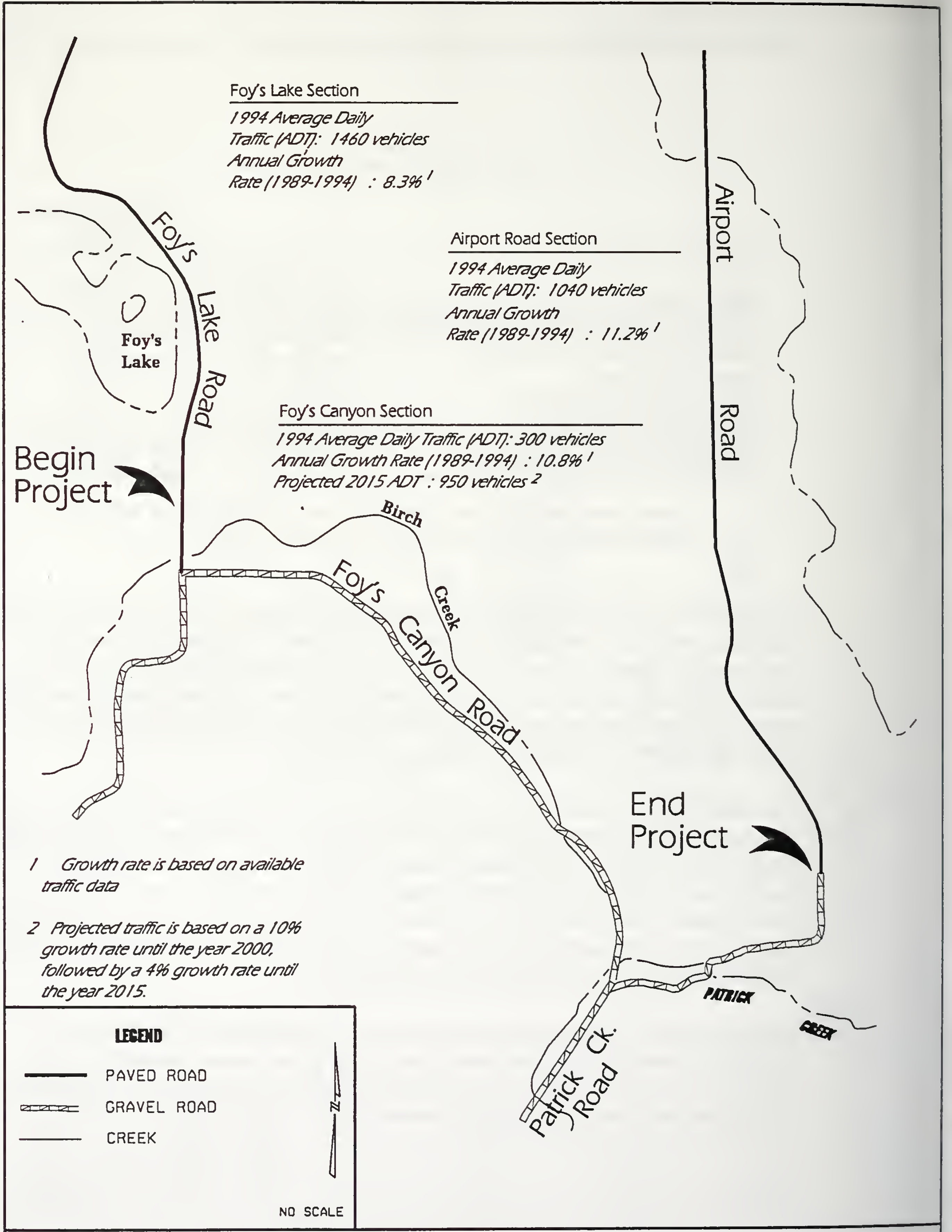
		Annual Growth Rate (1)
Location on S 503	Approximate Milepost	1989-1994 6 years
North of Foys Lake	2 -3	6.7%
North of Junction of Canyon & Lake Roads	3	9.9%
Foys Canyon Road ---- Beginning	3.8	4.6%
South end of Canyon	6	19.9%
East of Patrick Creek Road	7	7.8%
Foys Canyon Road ------End	7.6	10.1%
South of Railroad Crossing	8-12	12.32%
AVERAGE RATE IN PROJECT AREA		10.6%

(1) Growth rate is based on historical traffic data. Shaded areas are outside the project limits and are not included in average calculations

An increase in rural residential development is contributing to the traffic growth in the Foys Lake and Foys Canyon area southwest of Kalispell. This general trend may continue for a number of years, but is not expected to grow at the current ten percent annual traffic growth rate for the 20-year design forecast. Original design plans for this project assumed a four percent annual traffic growth rate, which is more typical of moderate growth in a rural area outlying an urban area.

Forecasted traffic volumes were projected by using 1994 traffic counts as a base year. The design year for this project is 2015. 1994 traffic counts indicate an Average Daily Traffic (ADT) of 300. A ten percent annual traffic growth rate was utilized for the next six years (to 2000), followed by a four percent growth rate for the remaining 14 years. Based on the combined ten percent/four percent growth factors, the projected ADT for 2015 is 950 vehicles per day for Foys Canyon Road. This is an average of six percent growth per year for 20 years (see Figure 2-8).

Population projections prepared for the *Kalispell Transportation Plan* indicate a population growth rate for Flathead County of about six percent every five years through the year 2015. The Greater Kalispell population is expected to grow by about 6.5 percent every five years through the year 2015.



Foy's Lake Section

1994 Average Daily Traffic (ADT): 1460 vehicles
Annual Growth Rate (1989-1994) : 8.3%[1]

Airport Road Section

1994 Average Daily Traffic (ADT): 1040 vehicles
Annual Growth Rate (1989-1994) : 11.2%[1]

Foy's Canyon Section

1994 Average Daily Traffic (ADT): 300 vehicles
Annual Growth Rate (1989-1994) : 10.8%[1]
Projected 2015 ADT : 950 vehicles[2]

[1] *Growth rate is based on available traffic data*

[2] *Projected traffic is based on a 10% growth rate until the year 2000, followed by a 4% growth rate until the year 2015.*

FOY'S CANYON ROAD

TRAFFIC DATA
Figure 2-8

Rural roadway level of service (LOS) reflects three parameters: average travel speed, percent time delay, and utilization of capacity. These parameters vary between roadways which primarily provide mobility versus accessibility. Level of service is described graphically in Figure 2-9.

The relatively low volumes and low operating speed on S 503 support the roadway's designation as a rural, major collector. The low volumes indicate the roadway currently operates at approximately LOS B.

The general growth in the area will result in increased traffic volumes using S 503. The year 2015 projected volumes for the Preferred Alternative (less than 1000 AADT) are well under the capacity of a rural roadway, including the existing section. All existing access points will be maintained with the proposed project. Therefore, the future LOS will reflect the Preferred Alternative's roadway conditions (safe operating characteristics) and its provision of access.

2.7 Maintenance

S 503 is currently maintained by Flathead County and will continue to be maintained by the County. The existing gravel surface requires frequent maintenance by County forces during summer months. The County estimates the summer maintenance requires grading and additional gravel every two weeks, with approximate annual costs of $8,500 per year (1995 dollars). A paved road would not require this seasonal expense but would, however, require paved road maintenance such as striping, crack sealing, and patching consistent with Airport and Foys Lake Roads. It is expected that the average annual maintenance costs for Foys Canyon Road would decrease with the Preferred Alternative.

Winter maintenance costs relate directly to plowing and are also provided by County forces. The County prioritizes paved roadways for plowing. Due to the beginning and ending sections of S 503 being paved, it is assumed that the plowing priority for the middle section (Foys Canyon section) will be based on the plowing of the entire, circular roadway.

Maintenance problems associated with Foys Canyon Road are:

- insufficient shoulder widths for maintenance vehicles and operations,
- shading and icing of the roadway due to proximity of the trees, and

LOS	Roadway Segments
A	Free flow, low traffic density
B	Minimum delay, stable traffic flow
C	Stable condition, movements somewhat restricted due to higher volumes, but not objectionable for motorists
D	Movements more restricted, queues and delays may occur during short peaks, but lower demands occur often enough to permit clearing, preventing excessive backups
E	Actual capacity of the roadway involves delay to all motorists due to congestion
F	Forced flow with demand volumes greater than capacity resulting in complete congestion

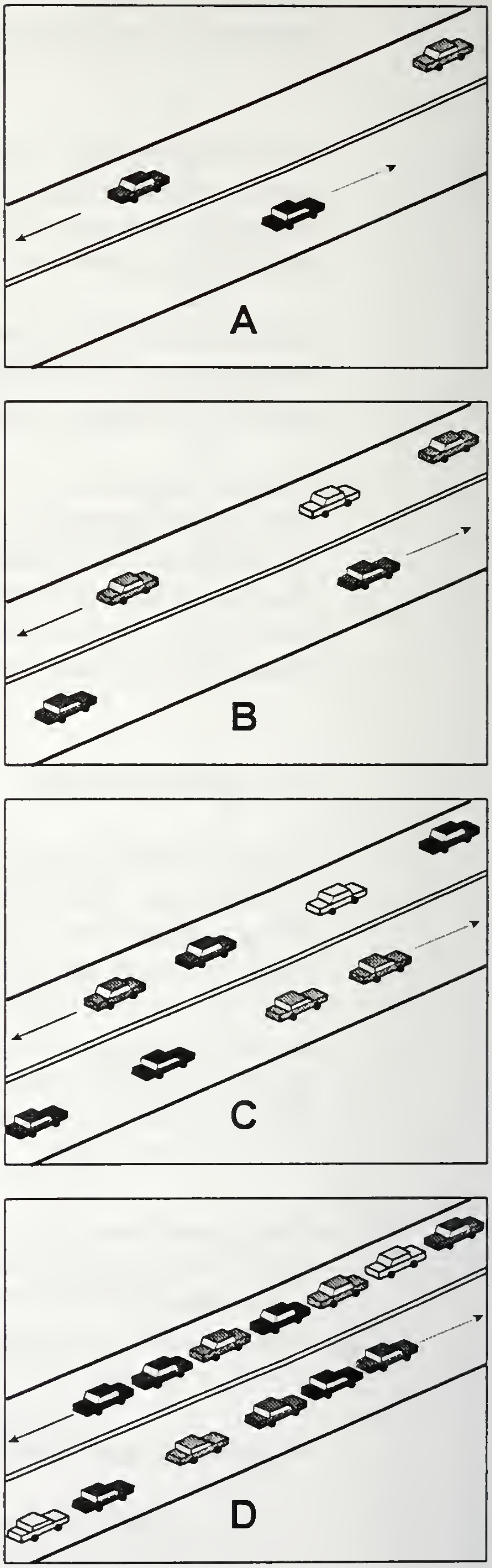


Figure 2-9

Level of Service Definitions

- pot-holing and winter icing as a result of deficient roadway drainage (roadway-cross slope and through the roadway-culverts).

2.8 Summary of Purpose and Need

To summarize, the primary purpose and need for improvements to Foys Canyon Road is to:

- Reduce the existing high rate of accidents
- Provide a facility which is constructed to current design standards.
- Provide for continuity in roadway cross-sections between the Foys Lake Road and Airport Road sections.
- Provide for anticipated traffic growth.
- Reduce maintenance problems.

3.0 Alternatives

A number of alternatives for improvements to Foys Canyon Road were developed and considered during the design process and public workshops. This chapter describes the alternatives considered but not advanced, presents the screening evaluation used, and states the alternatives advanced.

3.1 Alternatives Advanced

The alternatives advanced include the No-Build Alternative and Preferred Alternative.

3.1.1 No-Build

The No-Build alternative would retain the existing roadway in its current state with no improvements and current maintenance requirements. Traffic growth could be adequately handled without decreasing the existing level of service (LOS). No changes would be made to lessen the accidents or to increase off-road safety features. Roadway dust, noise and maintenance requirements would increase proportionally to increased traffic growth.

3.1.2 Preferred Alternative

The Preferred Alternative is described in Section 1.0 (Description of Proposed Action) and shown on Figure 1-1.

3.2 Alternatives Considered But Not Advanced

The following alternatives were considered but not advanced for further analysis. Descriptions of these alternatives and reasons they were not carried forward are described in this section.

3.2.1 Secondary Roadway Design Modifications

Modifications to the secondary roadway design were considered and are described below:

3.2.1.1 Modification A, Kilometer 6.1-7.2 (Milepost 3.8-4.5).

This modification shifts north at approximately kilometer 5.6 (milepost 3.5) to traverse the open field in an easterly direction for about 0.4 kilometers (1/4 mile), then curves southward to rejoin the Preferred Alternative alignment at approximately kilometer 7.1 (milepost 4.4). This modification:

- Is not a high accident zone and would be more distant from, and thus create the potential for adding parking spaces to, the Foys Community Center.

- Results in potentially-reduced wetland impact, reduced vertical grades and reduced earthwork requirements. It would result in impacts to designated prime farmlands.

- Was suggested by Dallas Herron, one of the owners of the property that the alignment would cross. Further discussions among the family members owning the property resulted in not favoring the modification since it would split the 16 hectare (40 acre) parcel and have potential impacts to future building plans of several family members.

This modification was not advanced based on impacts to prime farmland, splitting a parcel, and landowner objections.

3.2.1.2 Modification B, Kilometer 9.7-11.3 (Milepost 6.0-7.0).

This modification shifts north to traverse the hillside above Patrick Creek between kilometers 10.1 and 10.9 (mileposts 6.25 and 6.8). and rejoins the Preferred Alternative alignment between kilometers 11.1 and 11.3 (mileposts 6.9 and 7.0), near Wild Rose Trail. Modification B will result in the following:

- Results in potentially reduced wetland impacts.

- Traverses a slope exceeding 20 percent where the alignment follows the hillside, thus requiring substantial cut and fill.

- Results in noise, visual, and other roadway-related impacts to Wild Rose Trail residents.

This alternative was not advanced because of impacts to residential areas (noise, visual) and the steep grade of the alignment.

3.2.1.3 Modification C, Kilometer 11.1 (Milepost 6.9)

This modification shifts easterly at the existing s-curves located between Patrick Creek Road and Wild Rose Trail, and rejoins the original secondary roadway near Wild Rose Trail.

This alignment lessens impact to wetlands by approximately 0.15 hectare (0.38 acre) and was evaluated in detail for this reason.

It was not advanced for the following reasons:

- Right-of-way would be required from 4 additional properties, resulting in landowner hardship.
- Three driveways would be relocated.
- A nearly 12 meter (40 foot) vertical cut would be required, resulting in a visual impact.
- A stand of mature coniferous trees would be removed, resulting in a visual impact.
- Construction costs would be increased by approximately $50,000 due to increased earthwork and grading requirements. In addition, right-of-way costs would be increased.

3.2.1.4 Modification D, Kilometer 11.3-12.1 (Milepost 7.0-7.5)

This modification shifts the alignment northwesterly, further up the hillside above the existing roadway and rejoins the Preferred Alternative alignment at approximately kilometer 12.1 (milepost 7.5) before a large stand of coniferous trees.

- This alternative results in severe impacts to residential properties, including the potential need to displace a structure.

This modification was not advanced due to severe impacts to residents.

3.2.2 Pave Existing Surface Only

This alternative provides an asphalt surface for the existing roadway surface with no changes in right-of-way, curves, or off-road features.

- No changes would be made to lessen the accidents or to increase off-road safety features.

- Possible underground springs which may surface in canyon roadway section would substantially affect operating conditions and maintenance needs if they occur. Maintenance needs would be reduced if the springs do not appear.

This alternative would not address the tight curves, lack of sight distance, and lack of a clear zone, and would therefore perpetuate the high accident rate along Foys Canyon Road. This alternative would not meet driver expectations for design features found on Foys Lake and Airport Roads. This alternative was not advanced because it would not meet purpose and need for the project and is not eligible for federal or state funding.

3.2.3 Non-Secondary Road to 48 kph (30 mph) Design

This alternative would provide an asphalt surface for the existing roadway with some changes in right-of-way, curves, and off road features.

- This alternative would reduce roadway dust and maintenance needs.

- The 48 kph (30 mph) design may reduce the potential for accidents.

- The 48 kph (30 mph) design is not compatible with the roads on either end of Foys Canyon Road (Airport Road and Foys Lake Road).

- This design would create continuity, providing an unbroken paved surface between Foys Lake Road and Airport Road.

This alternative would not meet driver expectations for design features found on Foys Lake and Airport Roads. This discrepancy between the improvements to Foys Canyon Road and the two other segments may result in an increase in accidents.

This alternative was not advanced because it does not meet purpose and need, and it is not eligible for federal or state funding.

3.2.4 Proposed Secondary Roadway with Design Exceptions

Two design exceptions were considered. Design exceptions allow specific roadway sections and/or elements to be designed to a standard less than the overall roadway. Design exceptions must be justified and approved at state and federal levels for each site where applicable criteria are not met. Each exception requested should address the impacts to: the accident data, environmental impacts, right-of-way, construction costs and serviceability impacts (source: *MDT Roadway Design Manual*, Section 8.8).

3.2.4.1 Design Exception A, Horizontal Curve Exception at Project Beginning

This alternative would provide a horizontal curve between north/south Foys Lake Road and the east/west Foys Canyon Road constructed to a 48 kph (30 mph) curve versus the 64 kph (40 mph) curve included with the Preferred Alternative.

3.2.4.2 Design Exception B, Stop-Sign Controlled, Tee Intersection at Junction with S 503 and Patrick Creek Road

With this alternative, Patrick Creek Road would continue into the S 503 alignment to the east, while the Canyon leg would tee into this roadway at a 90-degree intersection. A three-way stop sign would require all vehicles to stop.

3.2.4.3 Summary of Design Exceptions A and B

- Neither design exception A nor B would provide a consistent roadway for the traveling public.
- Neither design exception A nor B would meet driver expectancy, thus increasing the potential for accidents in these two areas.

- Design exceptions for A or B cannot be justified based on any of the following:
  - Lessening of environmental impacts
  - Right-of-way constraints
  - Increased construction costs
  - Improved safety conditions
  - Improved serviceability

Both design exceptions were not advanced because of safety problems and because they do not meet the purpose and need of the project.

4.0 Existing Conditions, Impacts, and Mitigation Measures

4.1 Land Use, Zoning and Land Use Planning

4.1.1 Existing Conditions

The majority of the study area is currently devoted to low-density, single-family housing. Some agricultural land uses remain, but they are being rapidly converted to large-lot subdivisions. This type of land use conversion (agriculture to housing) is endemic throughout Flathead County and will likely continue well into the next century. There are no commercial land uses along the Foys Canyon Road section of Secondary Roadway 503. Land ownership in the study area is primarily private, the exceptions being County-owned Herron Park, Foys Community Center and one parcel of state-owned land (see Figure 4-1).

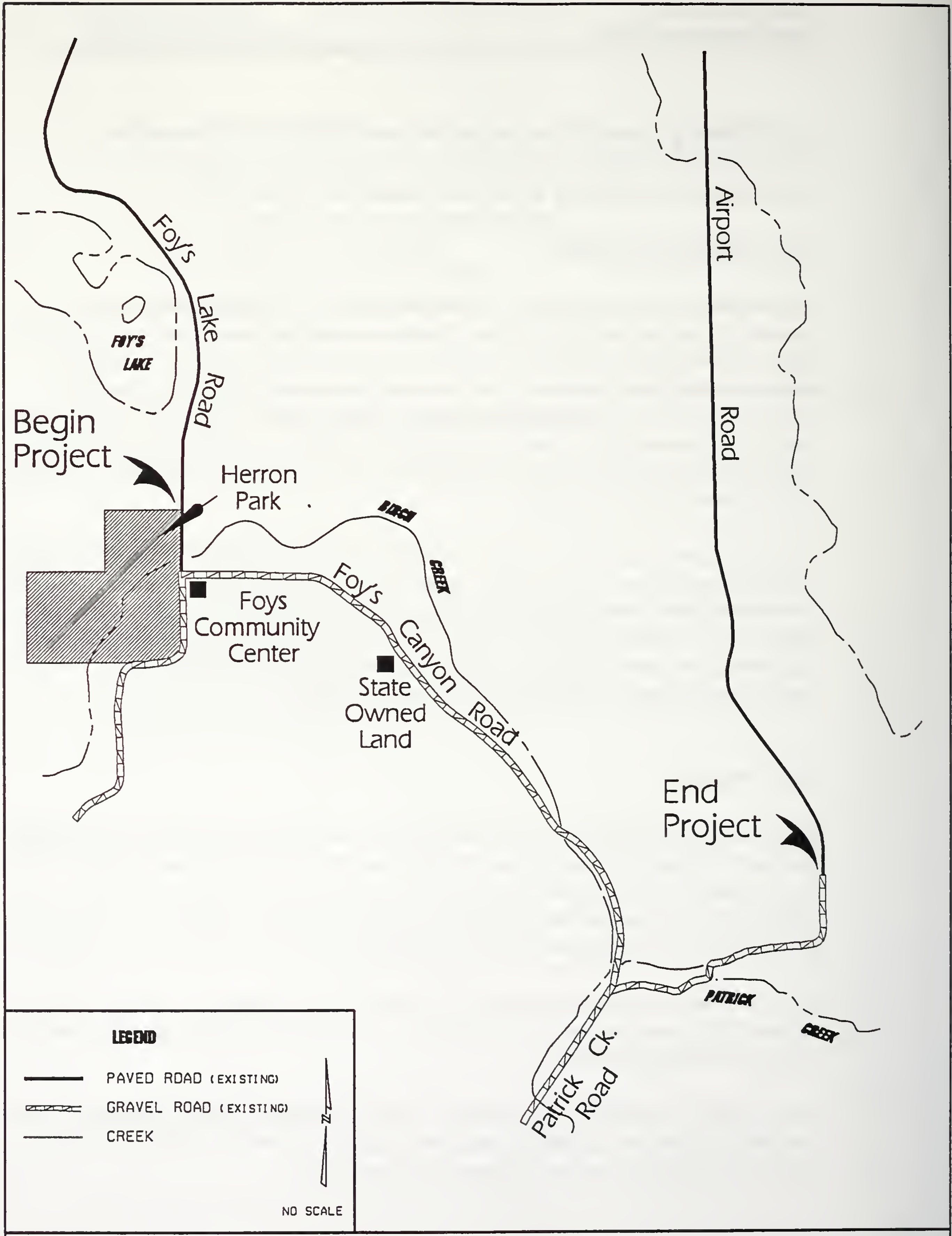
The study area is under the jurisdiction of Flathead County and is currently not subject to zoning regulations. The first three goals of the *Flathead County Master Plan, Update 1994* are to protect water quality, air quality, and private property rights. As a result, the direction and form that growth takes is largely dictated by market interests rather than local government regulation. The *Master Plan Map, Year 2000* calls for the study area to be developed as "suburban (two units per acre)."

4.1.2 Impacts

Improved access to the study area, and improved safety and paving will likely promote accelerated residential development in the near term. These land use changes will be an acceleration of the present trend of land conversion of undeveloped land to residential use. Over the long term (to year 2015), however, land use in the study area is anticipated to be the same with the No-Build and with the Preferred Alternative.

The Preferred Alternative is generally consistent the *Flathead County Master Plan, Update 1994.* Localized air quality will improve with the elimination of dust generated from the existing gravel road.

The current trends in the area will likely continue with the No-Build alternative. The No-Build alternative is generally consistent with the Master Plan, and is not likely to induce or accelerate land use changes in the near term.



FOY'S CANYON ROAD

PUBLICLY OWNED PROPERTY IN STUDY AREA
Figure 4-1

4.2 Prime and Unique Farmlands

Prime and unique farmland is protected by the Farmland Protection Act. Coordination is required with the USDA, Natural Resource Conservation Service (NRCS).

4.2.1 Existing Conditions

No published soil survey is available for this portion of Flathead County. However, the Flathead County office of the NRCS was contacted and they provided a map depicting Prime farmland in the project area. In addition, NRCS staff conducted a site investigation and confirmed that the prime farmland provided on the map was correct (see correspondence in Appendix B).

No unique farmland is located in the study area. In addition, there are no farmlands of either statewide or local importance located in the study area. The only prime farmland in the project area is located at the intersection of Foys Lake Road and Foys Canyon Road (see Figure 4-2).

4.2.2 Impacts

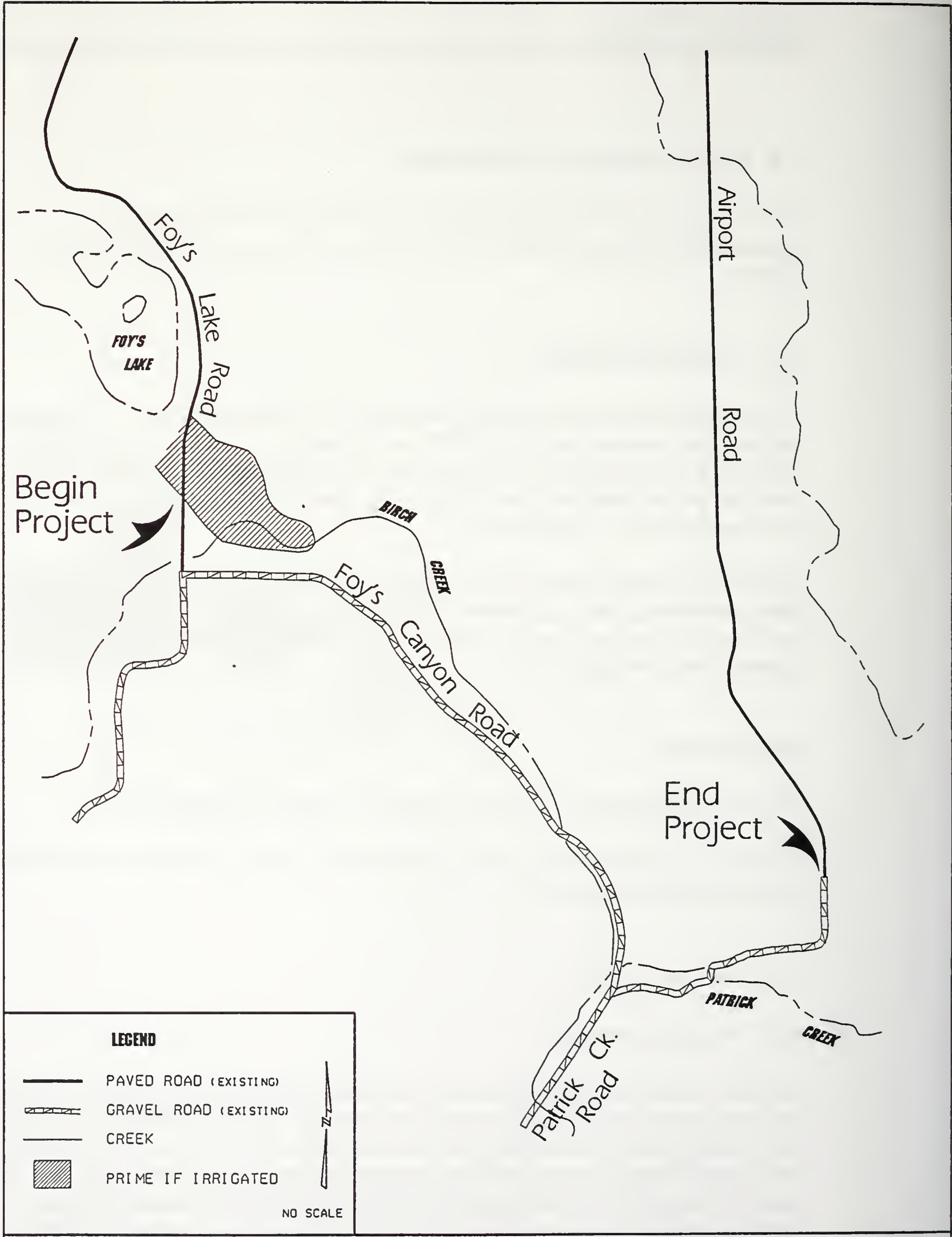
The No-Build alternative will have no impacts to prime or unique farmland.

The Preferred Alternative is in close proximity to the prime farmland identified above, but will not directly impact it.

4.3 Socioeconomic

4.3.1 Existing Conditions

Flathead County has experienced major population growth over the past 30 years, with the 1994 population estimated at 64,000. In 1991 and 1992 the county led the state in single-family home construction. From 1960 to 1990, over 90 percent of the growth in the Greater Kalispell Area [defined as roughly a 6.4 kilometer (4 mile) unincorporated area surrounding the city limits and including the city] has been outside of the city limits in unincorporated areas, including the project study area. In the early 1990s,



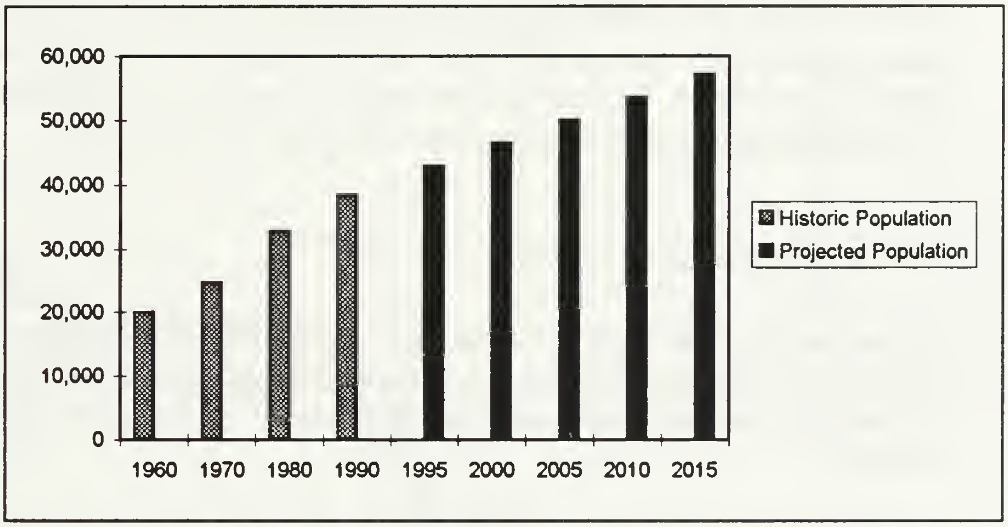
FOY'S CANYON ROAD

PRIME FARMLAND IF IRRIGATED
Figure 4-2

population in the Greater Kalispell Area grew at about 2.5 percent a year. (Source: *Kalispell Transportation Plan and the Flathead County Master Plan*, Update 1994.)

The following information describes the past and projected population for the Greater Kalispell Area:

Table 4-1
Greater Kalispell Area Historic and Projected Population



Source: Kalispell Transportation Plan, US Bureau of the Census

The population identified in Table 4-1 does not account for the summer seasonal population, which adds an estimated 5,000 people to the Greater Kalispell area. Most of these people live in the unincorporated areas outside of Kalispell.

The average 1993 income in Flathead County was $19,282. According to calculations made in the *Flathead County Master Plan, Update 1994*, the average annual income needed to rent is $19,800, and the average income needed to buy is $38,850. These figures illustrate a shortage of affordable housing in Flathead County.

There are no distinct minority or low-income groups located within the study area.

Fire protection is provided by the Smith Valley volunteer fire department. Police protection is provided by the Flathead County Sheriff Department.

Currently, the character of the study area is rural, with agricultural and ranching interspersed with suburban-type residential development. The open space and vistas available due to the presence of the agricultural/ranching and timbered landscapes provide an attractive setting.

As discussed further in Section 4.6 of this document, the Foys Community Center provides a facility for gatherings of all types. Both the Community Center and Herron Park (located directly west of the Community Center) are used by residents in the study area, as well as many others who live outside the study area (see Figure 4-3).

Secondary Road 503, including the Foys Canyon Road section, serves as a primary access route for private and US Forest Service logging access to timber stands via Patrick Creek Road. According to both private loggers and the Forest Service, use of the road for logging trucks is expected to decrease in the future.

4.3.2 Socioeconomic Impacts

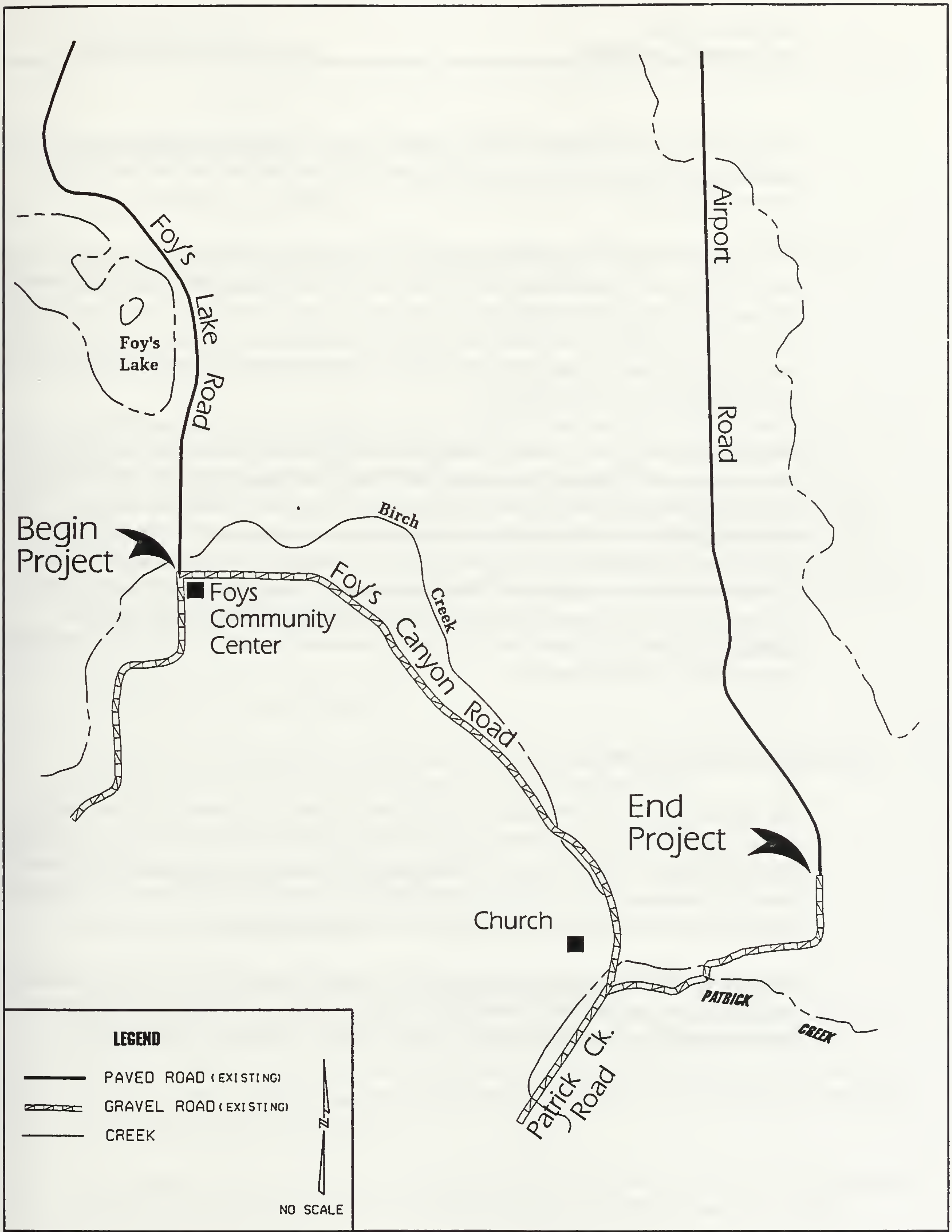
No changes to access to Foys Community Center will occur with the No-Build alternative. Response time for fire and police should remain the same. The contribution that the existing roadway makes to the rural character of the area will not change.

As mentioned in Section 4.1.2 of this document, the Preferred Alternative is likely to encourage the acceleration of residential development in the study area. The increased traffic and conversion of the current undeveloped lands to developed areas will change the character of the area to somewhat less rural, or more suburban. Although these changes are also expected with the No-Build alternative, they will occur sooner with the Preferred Alternative.

With the Preferred Alternative, the road itself will change from a winding gravel road tightly woven through stands of trees to a straightened paved road with clear zones devoid of trees. This will contribute to a change in character from rural to more suburban.

The Preferred Alternative will improve access for the Forest Service and logging companies who currently use the unimproved section of Foys Canyon Road. Response time of fire and police providers is expected to improve with implementation of the Preferred Alternative.

Access to the Foys Community Center will be changed by the Preferred Alternative's new alignment. The road currently passes directly in front of the Community Center; however, the new alignment will shift Foys Canyon Road to the northeast, away from



FOY'S CANYON ROAD

COMMUNITY FACILITIES
Figure 4-3

the Center. This will create a buffer between the Community Center and the road, presenting the opportunity to gain additional and needed parking for the Center (Norwood, 1995).

The Preferred Alternative will move Foys Canyon Road closer to some structures and away from others. Specifically on the east end of the project, the Preferred Alternative will move the road farther away from the church located near the junction of Patrick Creek Road and Foys Canyon Road. This will produce a net decrease in noise at this location. It will also open up more available space adjacent to the church which could be developed into compatible uses.

Moving east along the Preferred Alternative, a residence located on the north side of the road between Patrick Creek and Wild Rose Trail will be negatively affected by the new alignment which brings the road closer to the house. On the far east end of the project, the Preferred Alternative will bring the road closer to the residence located directly east of where Foys Canyon Road turns due north to meet Airport Road. These two residences may experience an increase in noise levels during peak travel hours due to the decreased distance between traveling vehicles and the house. Existing and predicted noise levels for the above-mentioned structures can be found in Section 4.8.2 of this document.

Environmental Justice

On February 11, 1994, President Clinton issued Executive Order 12898 requiring federal agencies to incorporate Environmental Justice considerations into the NEPA planning process. The purpose of this order is to ensure that low-income households, minority households, and minority businesses do not suffer a disproportionate share of adverse environmental impacts resulting from federal actions.

Neither the Preferred Alternative nor the No-Build alternative will affect, separate or isolate any distinct neighborhoods, low-income groups, or minority households or businesses. This proposed project is therefore in compliance with EO 12898.

4.4 Right-of-Way

4.4.1 Existing Conditions

The No-Build alternative will require no right-of-way acquisition, and will have no right-of-way impacts.

4.4.2 Right-of-Way Impacts

MDT has purchased the majority of the right-of-way needed for implementation of the Preferred Alternative. Approximately 49 separate parcels are required for the Preferred Alternative, of which 37 have been purchased. The process of acquiring right-of-way has been put on hold by MDT until this NEPA document and process is completed. The Preferred Alternative will also require the taking of one barn. This structure is located on the north side of Foys Canyon Road just east of Patrick Creek Road. The acquisition of property by MDT has been delayed pending the approval of the environmental assessment.

4.4.3 Right-of Way Mitigation

All right-of-way acquisition will be done in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

4.5 Pedestrians and Bicyclists

4.5.1 Existing Conditions

Due to a lack of viable roadway shoulders and visibility restrictions caused by substandard horizontal and vertical curvature and road dust, Foys Canyon Road does not provide a safe or otherwise optimal travel course for pedestrians or bicyclists. These elements presently discourage regular walking and bicycling along this roadway. However, there is limited use of the Foys Canyon Road section of S 503 by cyclists and pedestrians, as well as equestrians.

Although not listed on the official bicycle plan for Flathead County, local officials have indicated that if improved, S 503 could be used as a loop bicycle route for cycling enthusiasts. The loop route is not currently used because Foys Canyon Road is gravel and relatively unsafe for bicyclists (Jentz; Norwood, 1995).

4.5.2 Pedestrian and Bicyclists Impacts

The No-Build alternative will prolong the inadequate conditions for non-motorized travel that presently characterize Foys Canyon Road. As vehicular traffic continues to increase along this roadway, the non-motorized travel environment will further deteriorate.

The Preferred Alternative will substantially enhance travel conditions for pedestrians and bicyclists using Foys Canyon Road. Paving the roadway, smoothing existing substandard horizontal and vertical curves, and widening the facility to accommodate 0.61-meter (2-foot) paved shoulders will produce a route that is more conducive to non-motorized uses.

Implementation of the Preferred Alternative will complete an improved 16 kilometer (10 mile) loop route which could be used by bicyclists.

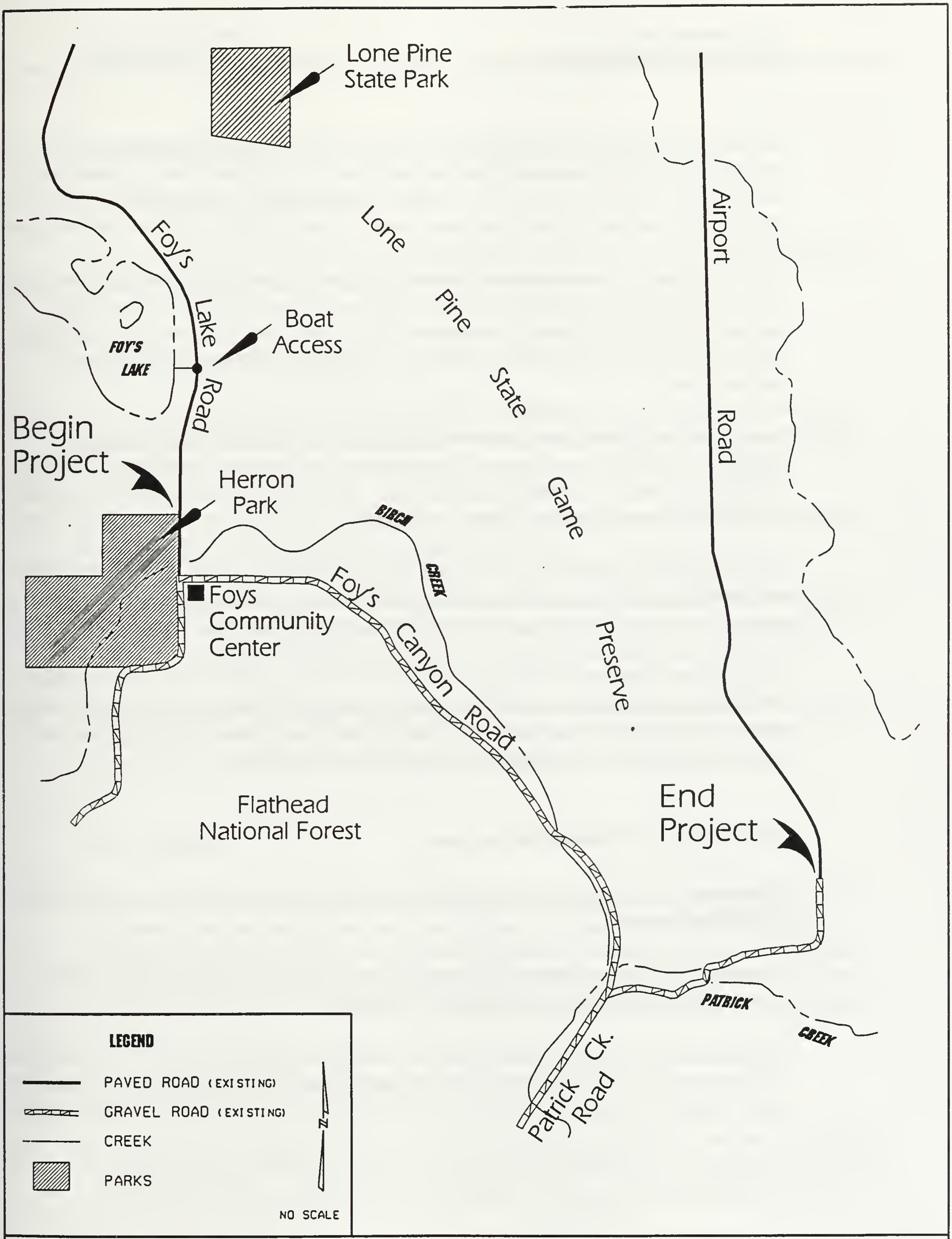
4.6 Parks and Recreation

4.6.1 Existing Conditions

A variety of parks and other recreational opportunities are provided within the study area and nearby. The Foys Community Center and Herron Park, both owned and administered by Flathead County Parks Department, are located within the project area at the intersection of Foys Lake and Foys Canyon Road (see Figure 4-4).

Foys Community Center stands on 0.8 hectares (2 acres) at the site of the former Foys school which was destroyed by fire years ago. The Community Center is a one-room structure with kitchen facilities and can accommodate about 30 to 50 people. It is not wheel-chair accessible. It is commonly used for meetings, weddings, parties and similar activities, sometimes in conjunction with activities at the nearby Herron Park. Access to the Foys Community Center parking area is located on the west side between the Community Center and Oftedahl Lane.

The 47 hectare (117 acre) Herron Park has facilities for equestrian events, picnics, hiking, cross-country skiing, snow-shoeing, Boy Scout events, and wildlife viewing.



FOY'S CANYON ROAD

PARKS : RECREATION

Figure 4-4

Access to the Herron Park parking area is about 60 meters (200 feet) south of the intersection of Foys Lake and Foys Canyon Roads via Oftedahl Lane, a gravel road extension of Foys Lake Road. Both Herron Park and Foys Community Center are well used by residents in the study area, as well as individuals outside of the study area.

The Foys Canyon Road section of Secondary Road 503 defines the southern perimeter of the Lone Pine State Game Preserve, a state-authorized, non-hunting set-aside originally intended to protect huntable wildlife. The Game Preserve was established under the Administrative Rules of Montana (ARM) 12.9.204, and is composed of private lands.

Lone Pine State Park is a separate entity situated at the north end of the larger Preserve. This state-owned parcel is managed by the Montana Department of Fish Wildlife and Parks to provide picnic areas, interpretive points and handicap-accessible tracts for the general public. Figure 4-4 shows both the Preserve and the State Park.

The Flathead National Forest is located about 16 kilometers (10 miles) south of the study area and is accessed via Patrick Creek Road. The National Forest offers a number of recreational opportunities, including hiking, camping, and hunting.

The Flathead County Parks Department also provides a public boat ramp access at Foys Lake, located on Foys Lake Road approximately 2.4 kilometers (1.5 mile) north of the intersection of Foys Lake and Foys Canyon Road. Water skiing, fishing, and swimming activities are provided at Foys Lake (see Figure 4-4).

4.6.2 Parks and Recreation Impacts

No changes to existing parks or recreational opportunities will occur as a result of the No-Build alternative.

Access to the Flathead National Forest will be somewhat improved, however no improvements will be made to Patrick Creek Road.

Completion of S 503 to secondary roadway standards may encourage greater use of the boat ramp at Foys Lake from potential users via Airport Road. Those users trailering boats may be more inclined to utilize Foys Lake via a paved roadway with less curves.

4.7 Air Quality

4.7.1 Existing Conditions

The project area is located in an "unclassifiable" / attainment area of Montana for air quality. It lies outside of the PM_{10} non-attainment area for Kalispell.

4.7.2 Air Quality Impacts

The No-Build alternative will result in the continuation of localized dust from the gravel road. However, no construction-related impacts will occur with the No-Build alternative.

Short-term air quality emissions will occur during the construction period, however these impacts are not considered to be substantial.

The Preferred Alternative involves paving a gravel road. There will be no additional lanes, and only minor alignment shifts. Therefore, the transportation conformity regulations of the Clean Air Amendments of 1990 do not apply to this project.

No long-term adverse impacts to air quality are expected as a result of the Preferred Alternative. Paving the existing gravel road will improve localized air quality and reduce PM_{10} emissions due to the reduction of dust.

4.8 Noise

In order to determine the traffic noise impact of the proposed improvements to Foys Canyon Road on local noise levels, an analysis as prescribed in *Title 23, Code of Federal Regulations (CFR), Part 772* was undertaken. Related to this noise analysis, the following material provides a description of existing noise conditions, summarizes analysis results and determination of impact, and discusses the need for mitigation.

4.8.1 Existing Noise Conditions

The existing land uses along Foys Canyon Road are classified by the Federal Highway Administration (FHWA) as Activity Category B and should not receive exterior noise levels greater than 67 dBA Leq. Leq refers to " the equivalent, steady-state sound level which in a stated period of time contains the same acoustic energy as the time-varying sound level during the same period." See Table 4-2 for a complete description of the FHWA Noise Abatement Criteria (NAC).

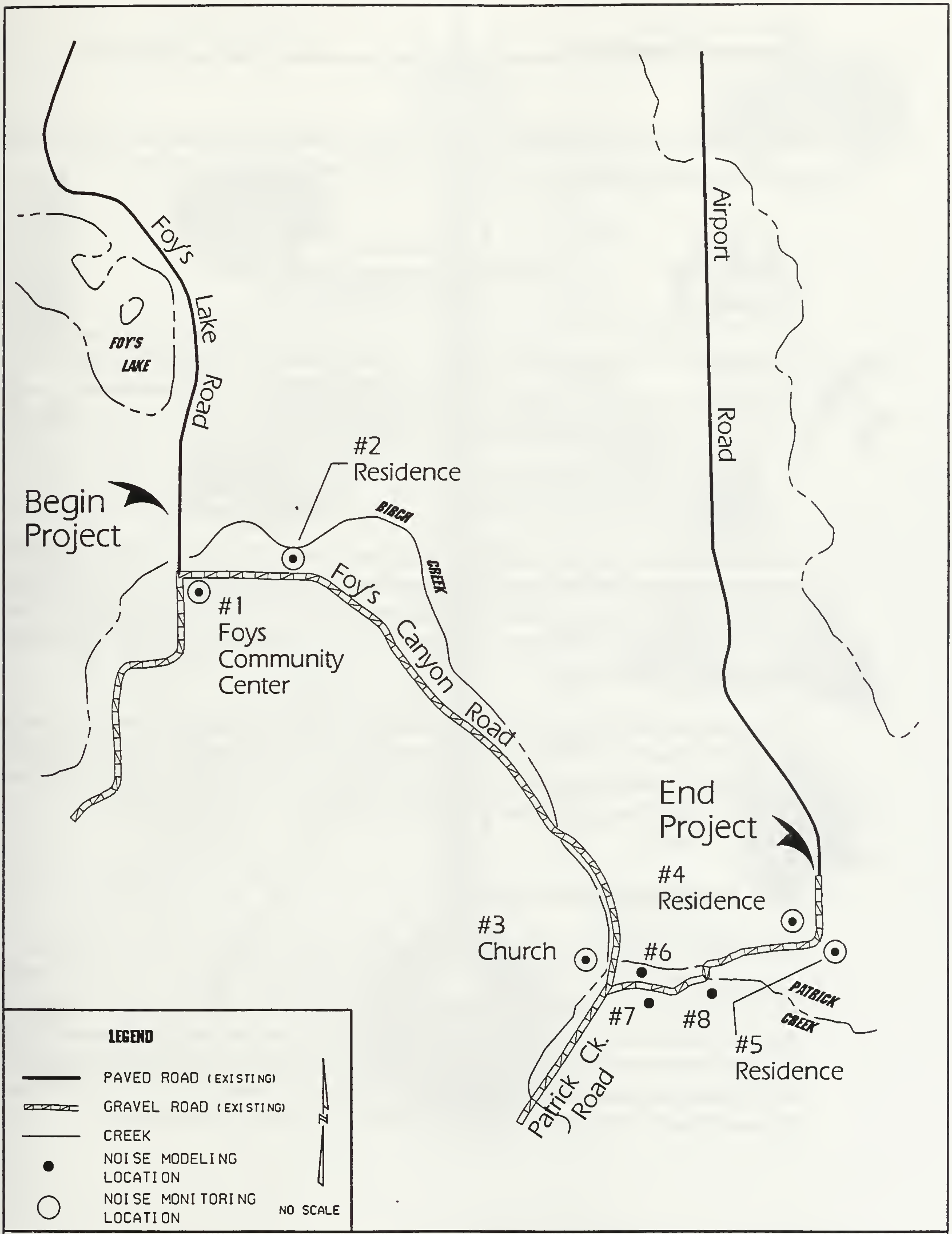
Table 4-2
FHWA Design Noise Level/Activity Relationships

Activity Category	Design Noise Levels - dBA[1] Leq (1 hr)	L10 (1 hr)	Description of Activity Category
A[2]	57 (exterior)	60 (exterior)	Tracts of land in which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose. Such areas could include amphitheaters, particular parks or portions of parks, open space, or historic districts which are dedicated or recognized by appropriate local officials for activities requiring special qualities of serenity and quiet.
B[2]	67 (exterior)	70 (exterior)	Picnic area, recreation areas, playgrounds, active sports areas, and parks which are not included in Category A and residences, motels, hotels, public meeting rooms, schools, churches, libraries, and hospitals.
C	72 (exterior)	75 (exterior)	Developed lands, properties or activities not included in Categories A or B above.
D	--	--	Undeveloped lands; no standards apply unless development planned, designed, and programmed and likely to be built, then the applicable A, B, C or D regulation applies.
E	52 (interior)	55 (interior)	Residences, motels, hotels, public meeting rooms, schools, churches, libraries, hospitals, and auditoriums.

(1) *Either L10 or Leq (but not both) design noise levels may be used on a project.*
(2) *Parks in Categories A and B include all such lands (public or private) which are actually used as parks as well as those public lands officially set aside or designated by a governmental agency as parks on the date of public knowledge of the proposed highway project.*

Source: Procedures for Abatement of Highway Traffic Noise and Construction Noise. Federal-Aid Highway Program Manual Volume 7, Chapter 7, Section 3. Federal Highway Administration.

Existing ambient noise measurements were taken at five locations in the study area, as shown on Figure 4-5. The results from these field measurements are provided in Table 4-3. All locations were selected because they represent sensitive land uses that fall into Activity Category B described above. The noise monitoring locations selected are located near the existing and future roadway alignments, thus capturing the worst-case noise conditions within the study area. At each location, the measurement was taken along the building facade which faces Foys Canyon Road in an area that represents an "active space." Noise monitoring was conducted in October and



FOY'S CANYON ROAD

NOISE MONITORING AND MODELING LOCATIONS
Figure 4-5

November of 1995. Due to the traffic volume consistency between the two peak travel periods, noise measurements were taken during both the AM and PM.

Table 4-3
Noise Monitoring Locations and Results
(Peak Traffic Period)

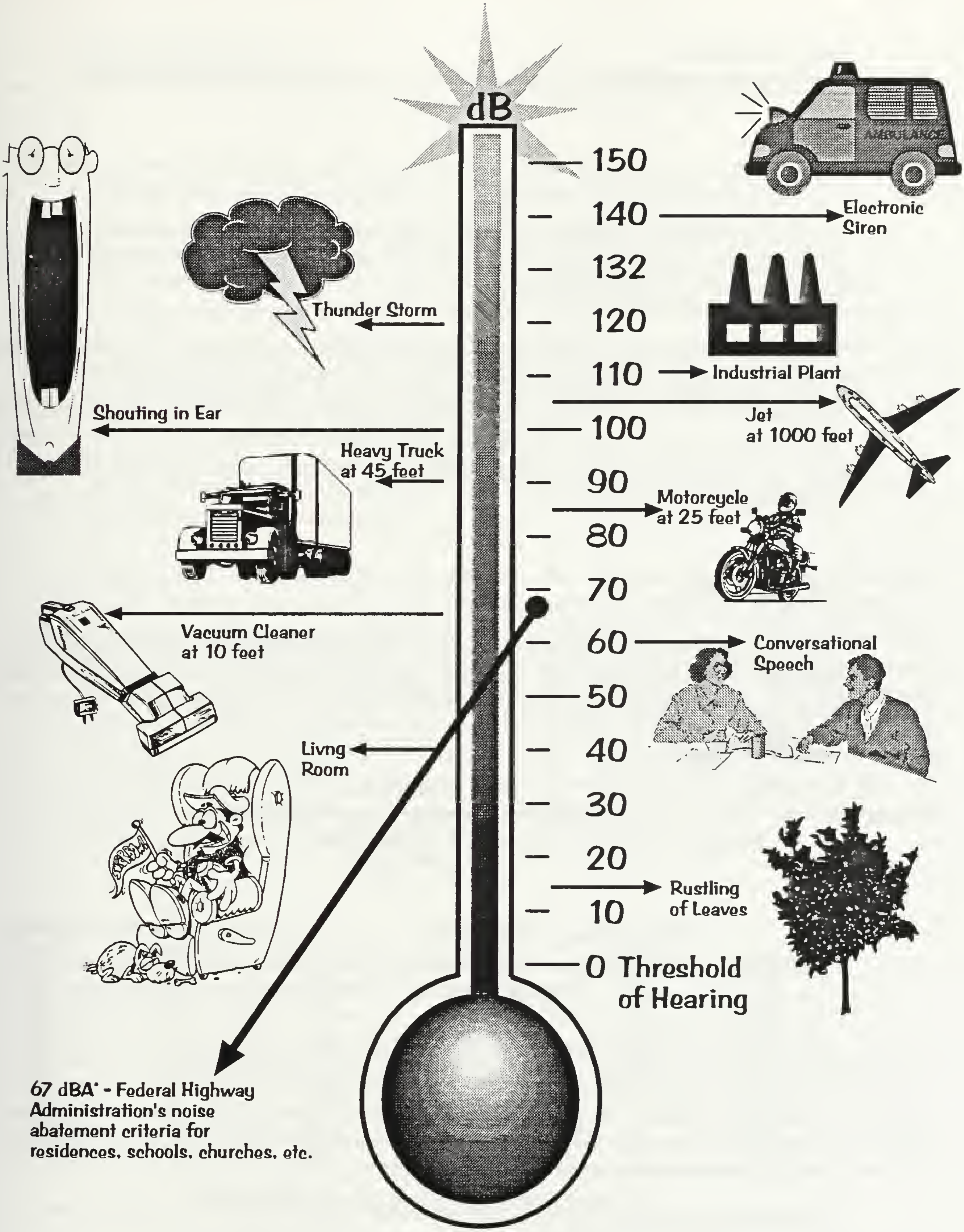
Receptor	Location Description	Distance to Noise Source {meters (feet)}	Noise Reading dBA L_{eq}	FHWA NAC dBA L_{eq}
#1	Community Center	29 (96)	56	67
#2	Single-family Residence	27 (89)	51	67
#3	Church	32 (105)	51	67
#4	Single-family Residence	83 (277)	51	67
#5	Single-family Residence	90 (300)	50	67

The noise measurements recorded ranges from a low of 50 dBA to a high of 56 dBA. Vehicles on Foys Canyon Road are the predominant noise sources. Monitored noise levels represent all exterior noise sources recorded at the sites, including natural and mechanical sources and human activities, whereas calculated noise levels represent traffic-generated noise only.

The monitored noise levels are well below the FHWA NAC at all receptors. The field monitoring results for this project are consistent with a non-urban setting with low-density development and limited vehicular activity. As a point of reference, Figure 4-6 provides sound level comparisons of various activities.

4.8.2 Noise Results and Impacts

The FHWA's STAMINA 2.0 noise model was used to calculate 1995 traffic noise levels and predict 2015 traffic noise levels for the No-Build and Preferred Alternatives. The STAMINA 2.0 model uses traffic volume, vehicle mix, speed, roadway design, and receptor location information to determine traffic noise levels at receptors. The year 2015 was chosen as the future analysis year in accordance with FHWA procedures for traffic noise analysis. These procedures (as defined in *Federal-Aid Highway Program Manual Volume 7, Chapter 7, Section 3)* require analysis of the design year.



67 dBA* - Federal Highway Administration's noise abatement criteria for residences, schools, churches, etc.

*The Federal Highway Administration's noise abatement criteria are listed as dBA. dBA is a time weighted value for noise. dB represents an individual noise event. dBA for a noise source is generally less than dB.

Figure 4-6

Sound Level Comparisons

Data Inputs

The traffic analysis conducted for this project was the source of all data related to existing and projected vehicular volume, mix, and operating speed. A summary of this information is provided in Section 2.

Preliminary engineering design plans were utilized for all geometric data requirements for this noise analysis. Noise receptor locations were determined through field observations and a review of aerial photographs. Five locations were monitored in the field, while a total of eight locations were modeled for impact determination. These eight modeled locations included six residences, a church, and a community center along Foys Canyon Road.

Analysis Results

Three model runs were completed as part of this noise analysis. These model runs included 1995 calculated, 2015 No-Build, and 2015 Preferred Alternative. The results from these noise model runs are provided in Table 4-4. Refer to Figure 4-5 for the receptor locations.

Table 4-4
Calculated Existing and Future Noise Levels
(Peak Traffic Period)
dBA L_{eq}

Receptor	1995 Existing Monitored	1995 Existing Calculated	2015 No-Build	2015 Preferred Alternative	FHWA NAC
#1	56	50	52	50	67
#2	51	47	50	55	67
#3	51	48	51	44	67
#4	51	45	48	50	67
#5	50	41	44	48	67
#6	-	46	49	52	67
#7	-	50	53	54	67
#8	-	45	48	49	67

1995 calculated noise levels are used for noise analysis purposes because these represent only noise that is generated from highway vehicles.

A comparison of 1995 monitored results with 1995 calculated results indicates some inconsistencies between noise levels. As stated previously, the monitored values represent all noise occurrences present, while calculated noise levels only represent vehicular sources. The existing monitored values are consistently higher (3 to 9 dBA) than the existing calculated levels. Two major reasons account for these inconsistencies. The first is the presence of background (non-vehicular) noise occurrences in the field that increase the existing monitored values. The second reason is the high percentage fluctuation in traffic volumes that occurs with slight variations in travel when there are low overall peak-hour traffic levels. Given that the study area has a very low hourly traffic volume, an increase of ten vehicles during field monitoring may result in noise levels that are different than existing calculations based on an assumed peak-hour traffic volume factor.

All existing noise levels (both monitored and calculated) are well within FHWA's NAC for Category B land uses.

The year 2015 No-Build alternative results, when compared with existing calculated results, indicate that noise levels will increase by 2 to 3 dBA at all receptors. This increase in noise level is caused by growth in traffic volume that would occur within the study area. The comparison of existing calculated values with year 2015 results for the Preferred Alternative indicates that noise levels will increase (+4 to 8 dBA) at six locations, decrease (-4 dBA) at one receptor, and stay the same at one location. The increases in noise levels with the 2015 Preferred Alternative will be caused by growth in traffic volume, widening of the roadway cross-section, and realignment of the roadway in certain locations. In other locations, the roadway's proposed realignment will benefit some people by moving further from sensitive receptors.

Impact Determination

FHWA criteria for determining noise impacts are:

- Comparison of predicted noise levels with the FHWA NAC. Any predicted noise level which approaches or exceeds the NAC level is considered an impact requiring consideration for abatement. FHWA defines "approach" as 1 dBA Leq less than FHWA NAC. The relevant NAC levels are 67 dBA Leq for Activity Category B. Therefore, an impact occurs to land uses in Category B at levels of 66 dBA Leq and above.

- Determination of whether a substantial increase will occur from existing to predicted noise levels. A substantial increase is considered an impact

> requiring consideration for abatement. MDT has defined "substantial increase" as one of 10 dBA Leq or greater.

In 1995, for both the existing monitored and calculated, none of the receptors received traffic noise levels which approach or exceed FHWA NAC. Under the 2015 No-Build and Preferred Alternatives, no receptors are projected to receive traffic noise levels which approach or exceed FHWA NAC.

The comparison of 1995 existing calculated results with the 2015 Preferred Alternative results indicates that no receptors are projected to receive substantial increases in traffic noise levels over the next 20 years with implementation of the proposed action. The largest increase in noise level between the 1995 existing calculated and the 2015 Preferred Alternative is 8 dBA (Receptor #2).

4.9 Water Resources/Quality

4.9.1 Existing Conditions

The study area contains two creeks, Birch Creek and Patrick Creek, which are tributaries to the Upper Flathead River Basin. Birch Creek generally parallels Foys Canyon Road as it travels southeast to join Patrick Creek near the Patrick Creek Road junction. Patrick Creek then flows roughly east to join the Flathead River. These creeks serve to drain the runoff from the hills which border the valley through which Foys Canyon Road passes.

Water collected in the Upper Flathead Basin flows into Flathead Lake. From there it flows down the Lower Flathead River which joins the Clark Fork River, and eventually the Columbia River by way of the Pend d'Oreille. The waters discussed in this section are part of the western slope of the Continental Divide which eventually discharges into the Pacific Ocean.

According to United States Geological Service (USGS) topographic maps, Birch Creek is intermittent. Within the study area the creek undergoes several significant changes. Before the creek enters Foys Canyon, it is relatively slow flowing and sinuous, making its way gradually southeast to the canyon entrance. Upon entering the steeper gradient of Foys Canyon, Birch Creek becomes straighter and faster. Based on field observations, it should also be noted that the relationship between Birch Creek and surface/groundwater becomes complicated within Foys Canyon. The waterway will disappear at times, going underground and then reappearing farther down the canyon until it meets Patrick Creek above ground.

Patrick Creek is identified as constant and meanders across the relatively flat valley floor out of the study area towards the Upper Flathead Basin. Both waterways are dependent on spring runoff and their level and velocity will vary accordingly.

Water Quality

Patrick Creek and Birch Creek are rated B-1 for water quality throughout their course. A summary of this classification is: Waters classified as B-1 are suitable for drinking, culinary or food processing purposes after conventional treatment; bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

4.9.2 Water Resources/Quality Impacts

Two major issues related to water resources or water quality are:

- Increased impurities in stormwater runoff water from increased traffic flow, increased impervious surface and/or increased maintenance activities.

- Sediment loading during and after construction activities due to the exposure of bare substrate.

The No-Build alternative would have no short-term impact on existing water quality conditions and will result in less surface runoff since a gravel surface would remain. Long-term impact to water quality would occur with the No-Build alternative, as increases in traffic volume would eventually result in increased runoff contaminants over existing conditions.

Current traffic characteristics show only two percent of the vehicles which travel Foys Canyon Road to be heavy trucks. Nonetheless, the potential for chemical or hazardous material spills exists. The chances that such an accident might occur increase with time under the No-Build alternative since this alternative does nothing to reduce accident probability.

Impacts related to the implementation of the Preferred Alternative are limited to the crossing of Patrick and Birch Creeks. The construction required to make these crossings may have several impacts:

- Temporary increase in sedimentation from construction-related activities.
- Increase in contaminated stormwater runoff flowing into the water feature.
- Construction activities, including vegetation removal, the use of selected fill, and culvert replacement, would result in localized increases in suspended sediment load or turbidity at downstream locations.

Long-term water quality impacts associated with the Preferred Alternative would result from close proximity to the water crossings within the study area. In these areas, the increased impervious surface and increased traffic volume will result in increases in runoff volume and increases in runoff contaminants. Contaminants can include volatile solids, grease, petroleum, rubber, phosphate, nitrate, various heavy metals, and organic particulates abraded from the roadway surface. Long-term impacts are not anticipated to be significant based on relatively small projected average daily traffic levels.

The increase in contaminated stormwater runoff is not a critical issue. Previous studies have shown that 30,000 average daily traffic (ADT) is the threshold at which contaminants from roadway surfaces begin to impact surrounding waters. The projected ADT for this roadway is considerably less than 30,000, since the project ADT is 950 in the year 2015. Consideration should still be taken to route stormwater carefully into existing stormwater facilities where possible, or direct them into well-vegetated surface drainage networks.

The flatter side slopes and ditches which are provided with the Preferred Alternative will assist in containing and filtering roadway runoff.

4.9.3 Water Resources/Quality Mitigation

Throughout the construction phase, the use of procedures described in the *MDT Highway Construction Standard Erosion Control Work Plan* will be implemented. Some of these mitigation measures include:

1. Appropriately designed and located silt fences (during construction) to strain excessive sediment from runoff before entering water features.
2. Temporary and permanent retention ponds (during construction) to optimize settling time for sediment-laden runoff before entering a water feature.
3. Minimization of vegetation disturbance.
4. Restriction of movements of construction vehicles on unpaved areas where possible.
5. Preparation of a stormwater pollution prevention plan in the construction specifications which will be implemented by the contractor.

4.10 Wetlands

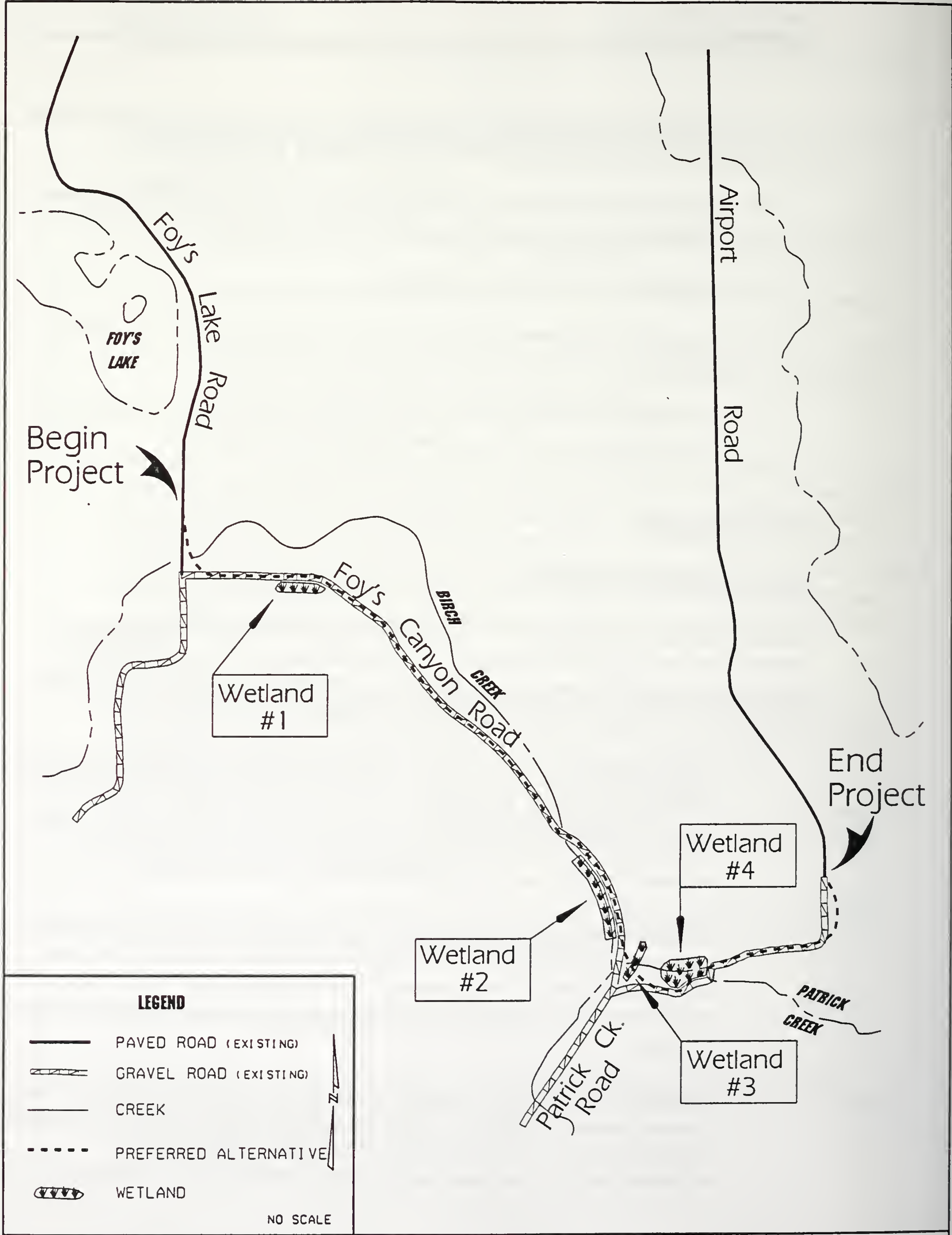
4.10.1 Existing Conditions

In October 1995, a wetlands survey was performed to document the existence and extent of wetlands within the study area. Wetland delineations were conducted in accordance with the *US Army Corps of Engineers 1987 Wetlands Delineation Manual* (COE 1987). Wetlands are shown on Figure 4-7 and described below:

- **Wetland Site #1** - Site 1 is created by the impoundment of sheet surface and groundwater flows by the crossing of the existing road grade. These flows would naturally travel northeast and begin to concentrate at the headwater of Birch Creek. No surface flows were identified to be flowing into this wetland, however there was standing water/inundation present.

- **Wetland Site #2** - Site 2 is a result of Birch Creek as it flows into the narrow portion of the canyon. At this point several lateral ephemeral flows have joined Birch Creek. There is enough flow to support the channelized, forested wetlands that cover the bottom of the narrow valley adjacent to the roadway.

- **Wetland Site #3** - Site 3 is a riparian area that is supported as Patrick Creek crosses the existing alignment and flows through a pasture area. The channel is approximately 1 to 1.5 meters (3 to 5 feet) wide on average and saturates/supports a wetland corridor approximately 7.6 to 9.1 meters (25 to



FOY'S CANYON ROAD

EXISTING WETLANDS
Figure 4-7

30 feet) wide along its path. The channel is 31 to 61 centimeters (1 to 2 feet) deep in most places and was running full during the investigation. The adjacent stream banks slope very gently toward this channel so that at 4.6 meters (15 feet) from the channel the ground is only 45 to 50 centimeters (18 to 20 inches) above the ordinary high water mark in the open channel.

- **Wetland Site #4** - Site 4 is an emergent freshwater marsh created by the impoundment of Patrick Creek for agricultural purposes. It appears that these irrigation ponds may no longer be in regular use. The ponds have silted in and are completely vegetated. At the time of investigation, shallow surface water appeared sporadically through out the wetland. Although there are no large or significant open channels, surface water was flowing sinuously throughout the area in rivulets, eventually flowing out a breach in the berm close to the roadway. There are several parallel dikes or berms built approximately perpendicular to the original flow of the stream. The stream flows around the end or through the breach of the lowermost berm into a culvert and crosses underneath the road.

4.10.2 Wetlands Impacts

Impacts that will occur to wetlands include short-term impacts during construction, long-term impacts due to the placement of dredged or fill material in the wetlands, and long-term indirect effects due to receipt of runoff from the paved roadway.

Wetlands along the existing road (includes all of the identified wetlands) are currently receiving impact due to activities on adjacent agricultural lands, as well as sedimentation and pollutants (e.g., gravel) released during wind and runoff events. These impacts will continue with the No-Build alternative. However, the No-Build alternative will result in no additional fill in adjacent wetlands due to roadway construction.

Impacts related to the construction of the Preferred Alternative are described below:

- **Wetland #1**: This wetland is contained on its northern border by the existing roadway and will be impacted by the Preferred Alternative due to the proposed road widening and the construction of fill slopes. A total of 0.17 hectares (0.41 acres) or 59 percent of the existing wetland will be impacted, leaving a remaining wetland size of approximately 0.12 hectares (0.29 acres).

- **Wetland #2**: This wetland is narrow and long and will incur substantial impacts due to road widening and the construction of fill slopes required by the Preferred Alternative. A total of 0.34 hectares (0.85 acres), or 89 percent of the total existing wetland will be impacted, leaving a remaining 0.05 hectares (0.11 acres) of roadside wetland.

- **Wetland #3**: Unlike the other three wetlands, this wetland is not adjacent to the existing roadway and will be crossed rather than longitudinally encroached. The Preferred Alternative will cut through Wetland #3 in an attempt to smooth the existing curve of Foys Canyon Road as it exits the southern end of Foys Canyon. A total of 0.03 hectares (0.08 acres), or six percent of the total existing wetland will be impacted, leaving 0.46 hectares (1.13 acres). Of the four sites, wetland #3 will undergo the least relative impacts due to construction of the Preferred Alternative. There are no further impacts anticipated due to drainage improvements or culvert installation.

- **Wetland #4**: This wetland is located adjacent to the S-curve in Foys Canyon Road on the west side. The Preferred Alternative will impact 0.28 hectares (0.7 acres), or 16 percent of the total existing wetland, leaving 1.4 hectares (3.6 acres) of wetland.

To summarize, the following direct, permanent impacts (see Table 4-5) would occur as a result of implementation of the Preferred Alternative:

Table 4-5
Wetland Impacts

Site No.	Existing Area	Impacted Area
1	0.28 hectare (0.28 acre)	0.17 hectare (0.41 acre)
2	0.39 hectare (0.96 acre)	0.34 hectare (0.85 acre)
3	0.49 hectare (1.21 acres)	0.03 hectare (0.08 acre)
4	1.72 hectares (4.3 acres)	0.28 hectare (0.7 acre)
Total	2.88 hectares (6.75 acres)	0.82 hectare (2.04 acres)

In addition, there will be short-term impacts during construction.

Proposed drainage improvements planned in conjunction with the Preferred Alternative will improve the overall quality of the drainage into the wetlands.

In regard to indirect and cumulative impacts of the project as it relates to the growth in the project area, Flathead County has adopted the *Flathead County Master Plan*

Update which includes protection of wetlands and water quality. The County may implement the plan through zoning or other regulations.

4.10.3 Wetland Functions Impacted

The functions impacted for each wetland are provided in Table 4-6. Also included in this table is the percent of wetland filled which is another factor in determining the functions impacted.

Table 4-6
Wetland Functions Impacted

Parameters	Wetland #1	Wetland #2	Wetland #3	Wetland #4
Wetland Size	Moderate	Moderate	Low	Moderate
Habitat Diversity	Moderate	Low	High	Moderate
Food Chain Support	Moderate	Moderate	Moderate	Moderate
T&E/Species Habitat	Moderate	Moderate	Moderate	Moderate
MNHP Species Habitat	Moderate	Low	Moderate	Low
General Fish & Wildlife Habitat	High	Moderate	Moderate	Moderate
Flood Control and Storage	Moderate	High	Moderate	Moderate
Sediment Filtration	High	High	High	High
Erosion Control	None	Moderate	Low	None
Nutrient Cycling	Moderate	High	High	Moderate
Groundwater Discharge/Recharge	High	Moderate	High	High
Uniqueness	Moderate	Moderate	Moderate	Moderate
Recreation/Education Potential	High	Moderate	High	High
MDT Wetland Rating	II	II	II	II
Percent of Wetland Filled	**59%**	**89%**	**6%**	**16%**

4.10.3.1 Functional Impacts Descriptions

Site #1

Functions impacted at Wetland Site #1 are moderate. This is a well formed and diverse wetland with an MDT rating of II. Although it is relatively small in size, the vegetation is well zoned from the upland to small patches of open water. This wetland provides moderate or high functionality in many categories, including diversity, wildlife habitat, sediment filtration and recreation/education potential. Additionally, a large percentage of the wetland will be filled (59%). However, the encroachment is from only one side, thus, the Preferred Alternative does not split the wetland leaving the remainder in two small isolated pieces. Habitat and many of the other functions will still occur in the remaining wetland areas.

The existing roadway detains the surface flows of water and perhaps groundwater as well. Regrading and installation of a culvert as part of the Preferred Alternative may drain the entire wetland and remove all of the functions.

Site #2

Functions impacted at Wetland Site #2 are moderate to high based on the large percentage of wetland area to be impacted (89%). Site #2 is linear and narrow due to the physical constraints of the canyon. This wetland has an MDT rating of II. Removal of 89% of this wetland will hinder the "corridor" effects for habitat and flood conveyance/storage currently supplied by this wetland/riparian zone.

Site #3

Functions impacted at Wetland Site #3 are moderate. This wetland site is relatively important and has an MDT rating of II. Only 6% of the total area will be impacted. The impact is moderate to low if the prescribed mitigation is implemented. If the mitigation, which entails removal of the original culvert and restoration of the riparian vegetation, is not implemented then not only does the physical footprint of the new roadway need to be considered but the additional space between the old alignment and the new alignment which will become isolated. Any habitat value for this isolated piece will also be diminished. Functions impacted under this "island" scenario will be higher, potentially moderate to high.

Site #4

Functions impacted at Wetland Site #4 are low. Although this is a highly rated wetland (MDT rating of II), the minor amount of physical impact (only 16.0% of total area) held to a specific peripheral location reduces the overall impact to functions for the wetland. The remaining wetland areas should continue to function as they do currently.

4.10.4 Practicable Alternatives

Wetland #1: The alternatives which would avoid or minimize fill in this wetland include the No-Build Alternative, Pave Existing Surface Only Alternative, Non-Secondary Road to 48 kph (30 mph) Design, and Modification A. The No-Build

Alternative does not meet purpose and need for the project. The Pave Existing Surface Only Alternative and the Non-Secondary Road to 48 kph (30 mph) Design do not meet purpose and need for the project and are not eligible for federal or state funding. Modification A was not advanced for the following reasons:

- Increased impacts to prime farmland.
- The splitting of a parcel.
- Landowner objections.

Wetland #2: Alternatives which would avoid or minimize fill in this wetland include an alignment shift to the east, the Pave Existing Surface Only Alternative, and the No-Build Alternative. The alignment adjacent to Wetland #2 is substantially constrained by the canyon topography, and an alignment further east would result in slope or rock cutting. The Pave Existing Surface Only Alternative does not meet purpose and need for the project and is not eligible for federal or state funding. The No-Build Alternative does not meet purpose and need for the project.

Wetland #3: Alternatives which avoid or minimize fill in this wetland include bridging over the wetland, the No-Build Alternative, the Pave Existing Surface Only Alternative, and Modification B. Bridging is not considered a practicable alternative due to its greater cost (approximately three times the cost of a section of fill) and its greater safety hazard due to icing in the winter. The No-Build Alternative does not meet the purpose and need of this project. The Pave Existing Surface Only Alternative does not meet purpose and need and is not eligible for state or federal funding. Modification B was not advanced for the following reasons:

- Increased impacts to residential areas (noise, visual).
- The steep grade of the alignment would require substantial cut and fill.

Wetland #4: The alternatives which would avoid fill in this wetland are the No-Build alternative, the Pave Existing Surface Only Alternative, the Non-Secondary Road to 48 kph (30 mph) Design, and Modification C. The No-Build alternative does not meet purpose and need for the project. The Pave Existing Surface Only Alternative and the Non-Secondary Road to 48 kph (30 mph) Design do not meet purpose and need for this project and are not eligible for state or federal funding. Modification C was not advanced for the following reasons:

- Right-of-way would be required from 4 additional properties, resulting in landowner hardship and increased project cost.
- Three driveways would be relocated.

- Visual impact from a nearly 12 meter (40 foot) vertical cut and the removal of a stand of mature coniferous trees.
- A substantial increase in construction costs.

4.10.5 Wetlands Mitigation

Foys Canyon Road has been designed to avoid if possible, then to minimize disturbance and impacts to identified wetlands. However, since some wetlands are immediately adjacent to the existing roadway, complete avoidance of wetlands is not possible.

The overall mitigation goal must be no net loss in wetland area or quality. The Council on Environmental Quality (CEQ) (40 CFR 1508.20) provides regulations for sequencing of mitigation in the following order of priority:

- Avoidance of wetlands. Avoiding the impacts altogether by not taking a certain action or parts of an action.
- Minimization of Impacts. Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Repair, rehabilitation, restoration. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- Preservation and maintenance. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- Replacement. Compensating for the impact by replacing or providing substitute resource or environments.

Replacement wetlands (either created or restored) can only be used if there is no practical alternative to the discharge of dredged or fill material in a wetland which will have less adverse impact on the aquatic ecosystem and without other significant adverse environmental consequences that do not involve discharges into the Waters of the United States.

Permits for placing fill in wetlands must be obtained from the US Army Corps of Engineers under Section 404 of the Federal Clean Water Act, amended.

The COE will determine, as part of the Section 404 Permit, whether compensatory replacement wetlands are required. If replacement wetlands are required for mitigation of unavoidable permanent impacts to wetlands, a mitigation plan will be prepared.

MDT policy states that when avoidance is not possible, on-site mitigation will be given priority. In the event that replacement or enhancement is not possible due to construction, maintenance, safety, or other constraints, off-site mitigation will be considered.

General Mitigation Guidelines

The detailed mitigation plan will be developed in close coordination with the US COE, EPA, and the USFWS. The mitigation plan will follow the US COE *Habitat Mitigation and Monitoring Proposal Guidelines* and will be finalized prior to the issuance of the 404 permit. MDT is the responsible entity for funding and implementing the mitigation plan. Wetland mitigation is part of the project cost.

Success criteria for wetlands mitigation will consider the following:

a. Percent vegetative cover within the mitigation wetlands should be equal to or greater than the percent vegetative cover of the lost wetlands within a five-year period.

b. Vegetative species composition and diversity should closely approximate the composition and diversity of lost wetlands. One method for doing this could be by comparison of plant numbers and vegetative species lists at the lost wetlands and the mitigated wetlands.

Corrective action will be taken if criteria established for wetland mitigation success at the time of Section 404 permit application are not being met.

Minimization and Restoration During Design and Construction

Where wetland losses are unavoidable, wetland losses will be minimized by implementing conservation measures in roadway design and construction.

Conservation measures that will be considered include:

- Fill/cut slopes adjacent to wetland areas will be provided with erosion control silt fencing.

- Minimize vegetation removal.
- Revegetate all exposed areas to MDT standards to reduce erosion and sedimentation.
- Revegetate areas with desirable ground covers to inhibit invasion of noxious weeds and for aesthetic purposes.
- Coordinate weed control, seeding, and fertilization with the Flathead County Weed Control authority and MDT.
- Flag or fence wetland areas during construction to avoid unnecessary disturbance due to construction activities.
- Provide bank stabilization and erosion control to meet standards defined by the *MDT Highway Construction Standard Erosion Control Plan.*
- Wetland delineation boundaries will be incorporated into design plans.

Based upon the above considerations, it is determined there is no practicable alternative to the proposed construction in wetlands and that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

4.11 Wildlife / Threatened and Endangered Species

Information pertaining to endangered and threatened wildlife, fish, and vegetative species was obtained from the US Fish and Wildlife Service (USFWS); Montana Department of Fish, Wildlife and Parks (MDFWP); the Montana Natural Heritage Program (MNHP); the Montana Rivers Information System (MDFWP 1993); interviews with local area residents; a review of available literature relevant to the area; and a field survey conducted on October 2, 1995.

4.11.1 Existing Conditions

Nine species within Montana have been identified as either threatened or endangered by the US Fish & Wildlife Service. These species are listed in Table 4-7.

Table 4-7
Threatened or Endangered Species

Scientific Name	Common Name	Status
Canis lupis	gray wolf	endangered
Falco peregrinus	peregrine falcon	endangered
Grus americana	whooping crane	endangered
Mustela nigripes	black-footed ferret	endangered
Sterna albifrons	Interior least tern	endangered
Ursus arctos horribilis	grizzly bear	threatened
Haliaeetus leucocephalus	bald eagle	threatened
Charadrius melodus	piping plover	threatened
Howellia aquatilis	water howellia (plant species)	threatened

Source: US Fish and Wildlife Service

Under the Endangered Species Act of 1973 (as amended, 1988), the term "endangered species" is defined as a species in danger of extinction throughout all or a significant portion of its range; and "threatened species" are likely to become endangered within the foreseeable future throughout all or a significant portion of their range.

Only the peregrine falcon (endangered), and the bald eagle (threatened) are in need of consideration for this proposed project. The other species are either not endemic to the project area, or have been absent from the project area for several decades.

- **Peregrine falcon** - There are no known nesting locations for the peregrine falcon within the general area. Peregrine foraging use is infrequent and likely to be transitory within the immediate study area.

- **Bald eagle** - Bald eagles commonly occur in the general area as migrants and winter residents, with one recorded pair nesting approximately 4.8 kilometers (3 miles) east of the study area. The raptors can be expected to forage in the Foys Canyon Road study area vicinity.

No sensitive plant species were observed during the survey, nor are any listed or known to occur by USFWS or MDFWP personnel. There are no visible or documented resident locations for sensitive wildlife species within the study area. Patrick Creek is suspected of supporting the Westslope cutthroat trout, a sensitive fish species of concern. A cursory survey by MDFWP personnel in late November 1995 revealed the presence of brook trout within Patrick Creek. This sampling was too limited to determine the presence or absence of the more sensitive cutthroat trout.

The Foys Canyon Road study area contains a generous array of vegetative communities that serve as wildlife habitat for a variety of species. Coniferous stands intersperse with open grassland upon adjacent slopes. Riparian habitats associated with Birch and Patrick Creeks are comprised of such deciduous shrubs and saplings as red-osier dogwood, thin-leaved alder, mountain maple, water birch, quaking aspen, and black cottonwood.

The following is an abbreviated list of wildlife species that are likely to occur in the study area vicinity:

- A substantial population of raptors, including bald eagles, peregrine falcon, osprey, large buteo hawks, American kestrels, and merlins;
- Upland game birds such as the ruffed grouse and eastern turkey;
- Neo-tropical (song) birds;
- Various waterfowl;
- Ungulates, including white-tailed deer, with possible Rocky Mountain elk and transitory moose;
- Transitory and rare occurrences of large carnivores, including coyote, bobcat, red fox, mountain lion, black bear, gray wolf, and grizzly bear;
- A limited population of non-native brook trout and possible occurrence of the Westslope cutthroat trout (State sensitive species).

Mule deer are considered by area residents to be fairly uncommon, as are larger fur-bearing mammals.

4.11.2 Wildlife/Threatened and Endangered Species Impacts

The No-Build alternative will result in no impacts to wildlife or threatened or endangered species.

Implementation of the Preferred Alternative is not likely to adversely effect the endangered peregrine falcon, the threatened bald eagle, or their associated habitats. This determination is based on the infrequent use of the study area by the peregrine falcon and the relatively minor habitat loss for the bald eagle foraging in the study area. It is also considered to have no effect upon the remaining threatened and endangered species in this portion of the state because they are not endemic or have been absent from the project area for several decades.

With the potential for permanent loss of some riparian cover along portions of Birch Creek, long-term displacement of songbirds and small mammals can be expected as a result of the Preferred Alternative. Construction of this alternative within wet-site habitats immediately adjacent to the roadway may cause reductions in small, localized populations of amphibians and reptiles.

4.11.3 Wildlife/Threatened and Endangered Species Mitigation

Mitigation measures which will be implemented to minimize effects to the peregrine falcon, the bald eagle, and other raptors include the following:

- Any necessary electric transmission/distribution line relocations shall be constructed and raptor-proofed in accordance with the *Raptor Research Report No. 4*. Raptor-proofing is a policy currently being applied by the Montana Department of Transportation.
- Avoid stands of mature cottonwoods during construction.

The following measures will be taken to mitigate impacts upon wildlife and fisheries resulting from the Preferred Alternative:

- Removal of vehicle-killed deer from the roadway by county road personnel.
- Perpetuation of existing fish passages within the potentially-affected reaches of Patrick Creek.
- Revegetate all areas disturbed by construction. Revegetate roadway clear zones using unpalatable species to discourage wildlife attraction to the road.
- Use available techniques for sedimentation control during construction, including:
    - Sediment fencing,
    - Detention ponds,
    - Immediate revegetation, and
    - Netting or other mechanical retention devices.

4.12 Floodplains

4.12.1 Existing Conditions

There are two surface waterways within the study area, Patrick Creek and its tributary, Birch Creek. A 100-year floodplain has been delineated for Patrick Creek. Patrick

Creek originates in the mountains of the Flathead National Forest immediately west of the study area, and has a total watershed of approximately 50 square kilometers (19 square miles). The existing roadway crosses Patrick Creek in two locations within the study area and is partially inundated by the 100-year floodplain for Patrick Creek. Floodplain boundaries were determined from Federal Emergency Management Agency (FEMA) flood boundary and floodway maps for Flathead County, Montana.

Figure 4-8 shows the extent of the floodplains delineated by FEMA for Patrick Creek, the approximate floodplain limits for Birch Creek, and the existing and proposed road alignments.

Birch Creek originates in the Flathead National Forest to the west of the study area. It parallels the proposed alignment for the beginning of the project to its confluence with Patrick Creek. Birch Creek is a perennial stream with intermittent characteristics. It crosses the existing roadway in two locations within Foys Canyon immediately upstream of the confluence with Patrick Creek.

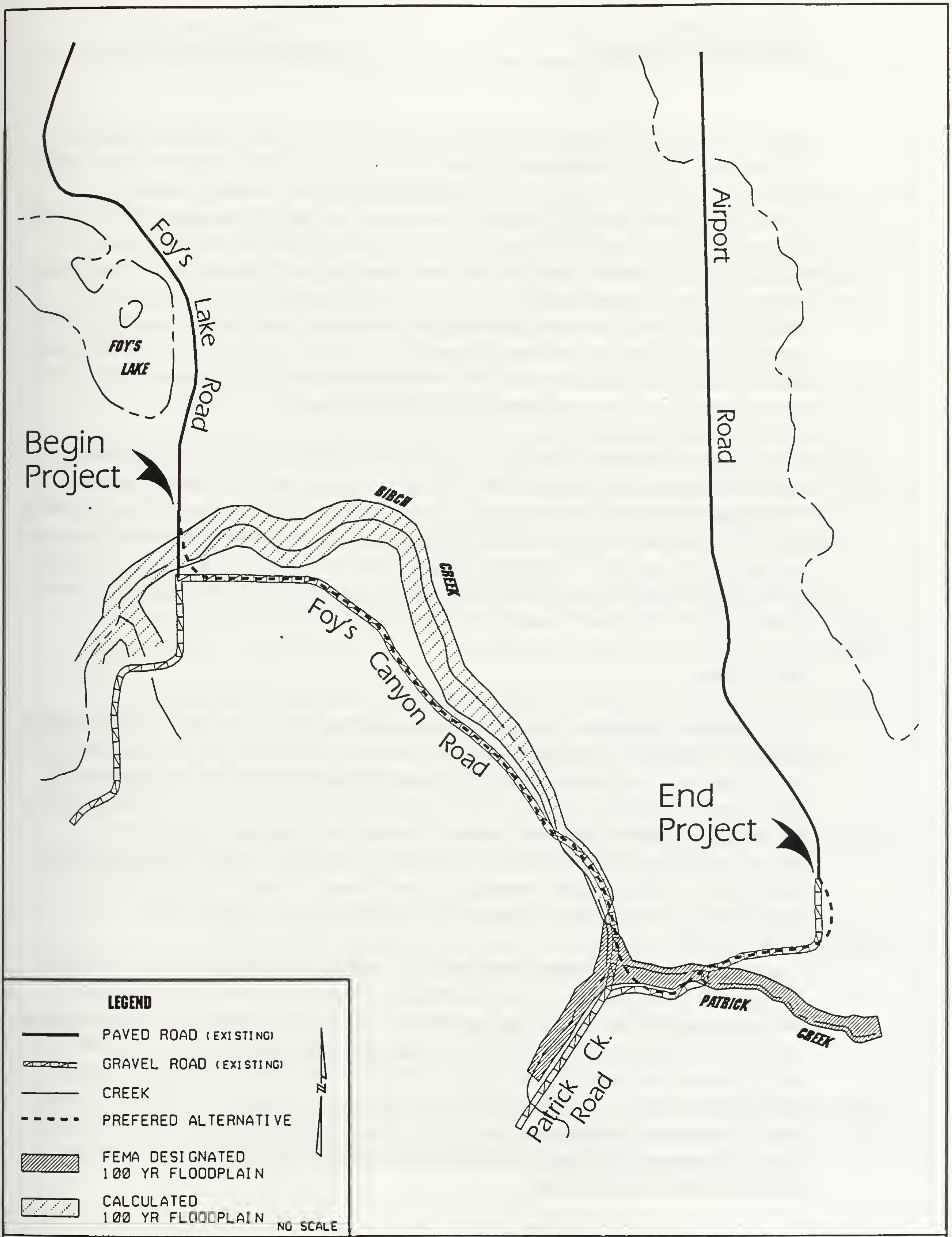
FEMA did not delineate a 100-year floodplain for Birch Creek. The approximate limits of this floodplain were determined using data collected from field observations, historical flooding patterns, USGS topographic maps, preliminary design cross-sections, and known hydrological features. Since the floodplain for Birch Creek has not been delineated, it was estimated to consist of the channel and overbank areas. The floodplain width of Birch Creek is estimated to range between 1 meter (3.3 feet) and 15 meters (49.2 feet). The narrower portions of the floodplain are through the contained portions of Foys Canyon. The fact that Foys Canyon Road has not historically been threatened by flooding supports an estimated relatively narrow 100-year floodplain width along Birch Creek within Foys Canyon.

This evaluation considers the impacts of the proposed construction of Foys Canyon Road on the 100-year floodplain of both waterways.

4.12.2 Floodplain Impacts

Patrick Creek

The Preferred Alternative crosses the Patrick Creek floodplain near the confluence of Birch Creek and Patrick Creek. The floodplain at the point of crossing is approximately 150 meters (500 feet) wide. A new 1,650 millimeters by 1,000 millimeters (66 inches by 40 inches) reinforced concrete arch pipe is proposed at this location to convey Patrick Creek under the proposed roadway. The pipe crossing



FOY'S CANYON ROAD

FLOODPLAINS
Figure 4-8

will be protected from scour with riprap edge protection, and is sized to convey the 100-year storm with a maximum 0.15-meter (0.5-foot) elevation change of the 100-year water surface profile upstream of the crossing. A second crossing is proposed approximately 650 meters (2,100 feet) downstream of the confluence with Birch Creek. At the inlet of the crossing, approximately 120 meters (400 feet) of realignment of Patrick Creek is planned along the proposed north edge of the roadway embankment. A twin 1,300 millimeters by 800 millimeters (52 inches by 32 inches) reinforced concrete arch pipe is proposed at the end of the channel realignment to again convey Patrick Creek under the Preferred Alternative. Both the channel and pipe have been sized to convey the 100-year storm with a maximum raise in the 100-year water surface profile upstream of the crossing of 0.15 meters (0.5 feet).

Construction within the floodplain includes the placing of roadway embankment, roadway construction, the installation of pipe crossings, waterway rechannelization, and riprap revetment. The drainage features are sized, however, to adequately convey the 100-year storm without substantial changes to the floodplain. Due to the increased roadway width, and the realignment of Foys Canyon Road, an estimated 0.54 hectares (1.34 acres) of the 100-year floodplain will be impacted by the Preferred Alternative.

Birch Creek

The Preferred Alternative construction is adjacent to Birch Creek within Foys Canyon for approximately 820 meters (2,739 feet) above the confluence of Patrick Creek. Due to the increased roadway width of 12.6 meters (42 feet), an estimated 0.10 hectares (0.25 acres) of existing floodplain will be occupied by the Preferred Alternative. With the Preferred Alternative, a new roadside channel with riprap lining will be constructed along the east side of the roadway to convey the entire 100-year flow of Birch Creek. The proposed channel for Birch Creek within Foys Canyon is a trapezoidal channel with a 1.2-meter (4-foot) bottom and 4:1 side slopes.

The proposed construction of a new roadside channel with riprap lining within Foys Canyon will affect the natural and beneficial floodplain values of the floodplain associated with Birch Creek. The construction is designed to carry the 100-year storm event fully within the confines of the new rip-rapped channel. In effect, this will reduce natural and aesthetic floodplain values that may have been associated with Birch Creek within Foys Canyon. This includes some impacts to wildlife resources, plants, and overall aesthetic values. Due to the intermittent nature of Birch Creek, there is little or no fish passage through Foys Canyon, therefore, there will be no impacts to fish in Birch Creek.

Summary

Due to the increased road width of 12.6 meters (42 feet), which includes the placement of roadway embankment, and the realignment of Foys Canyon Road, the Preferred Alternative will occupy a total of approximately .64 hectares (1.58 acres) of the existing 100-year floodplains for Patrick and Birch Creeks. Since the proposed crossings are designed to convey the 100-year storm and the roadway surface is elevated above the 100-year floodplain, the new driving surface is removed from the floodplain.

By raising Foys Canyon Road out of the 100-year floodplain, the risk of flooding of the road becomes virtually negligible. Consequently, the probability of accidents or road closure due to an inundated or flooded road decreases and overall driver safety increases. The Preferred Alternative is designed to meet the requirements of local and state floodplain regulations, which limit the changes in the 100-year water surface to 0.15 meter (0.5 foot) for the existing water surface profile. The probability of increased flooding to developable lands is limited to a 0.15-meter (0.5-foot) level.

Construction of the Preferred Alternative will neither increase nor decrease any support for development in the base floodplains. Access to the floodplains is already provided by the existing roadway; this will not change with the Preferred Alternative.

The Preferred Alternative is consistent with local, state and federal floodplain and water resource management programs. Impacts to the floodplain have been minimized by following current floodplain regulations. All practical measures to minimize harm to floodplains have been incorporated.

Analysis of the floodplain impacts to both Birch and Patrick Creeks has been done to determine if a significant encroachment will occur. This analysis shows that:

- There is not a significant potential for interruption or termination of a transportation facility and, in fact, the Preferred Alternative reduces risk to the traveling public, including providers of emergency services.

- The Preferred Alternative does not result in direct support of likely base floodplain development.

- Although the conversion of Birch Creek to a newly-constructed, rip-rapped channel will negatively affect some natural and beneficial floodplain values, this is not considered a significant encroachment because:

- Revegetation of the area along the top of the channel will occur over time, thus minimizing any long-term natural impacts.
- The flood-carrying capacity of this new channel is substantially improved and will thus decrease risk to surrounding properties.

The No-Build alternative has no impacts to natural and beneficial floodplain values, and no support of probable incompatible floodplain development. There are, however, ongoing potential flooding risks to the traveling public.

4.12.3 Floodplain Mitigation

Mitigation that will be provided to minimize impact to floodplains includes:

1. Use of standard MDT erosion control techniques to minimize impact to natural and beneficial floodplain values during construction.

2. Coordination with Flathead County related to any floodplain encroachment.

4.13 Cultural Resources

4.13.1 Existing Conditions

A Cultural Resource Inventory was conducted in 1985 and updated in October 1995. Five sites (24FH193, 24FH194, 24FH196, 24FH199 and 24FH202) were identified and recommended as ineligible to the National Register of Historic Places. No eligible sites were identified or recommended. The Montana State Historic Preservation Office (SHPO) concurred with this recommendation. (See SHPO correspondence in Appendix B.)

4.13.2 Cultural Resources Impacts

No impacts to known cultural resources will occur as a result of the No-Build alternative.

No impacts to known cultural resources will occur due to implementation of the Preferred Alternative.

4.13.3 Cultural Resources Mitigation

Prior to any project construction, the Flathead Culture Committee of the Confederated Salish and Kootenai Tribes of the Flathead Reservation will be notified so that they may monitor the ground-disturbing work on site. In addition, if any cultural resources are found during construction, work shall stop and the Montana Department of Transportation archaeologist or historian will be contacted, who will then consult with both the Flathead and Kootenai Culture Committees.

4.14 Hazardous Materials

4.14.1 Existing Conditions

Information regarding the presence of hazardous materials or incidents was requested from appropriate local, state and federal agencies, as well as field investigations conducted in October of 1995.

For the purposes of this assessment, hazardous materials are defined as products or wastes regulated by the US Environmental Protection Agency (EPA) or the State of Montana Department of Environmental Quality (MDEQ).

In Montana, Federal Comprehensive Emergency Response, Compensation, and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA), and underground storage tank (UST) site inventories are administered and maintained by the MDEQ. The EPA maintains a National Priority List (NPL) and non-NPL of sites within the state that have been investigated and documented.

In addition to the appropriate state and federal regulatory agencies, local land owners, the Flathead County Parks and Recreation Supervisor, and the Director of Disaster and Emergency Services for Flathead County were contacted. The results of the combined search yielded evidence of no known hazardous materials sites within the study area.

4.14.2 Hazardous Materials Impacts

The No-Build alternative will have no impacts on hazardous materials sites.

Construction of the Preferred Alternative should impact no known hazardous materials sites. It will, however, improve overall safety conditions which will minimize the potential for spills of hazardous materials.

4.15 Visual

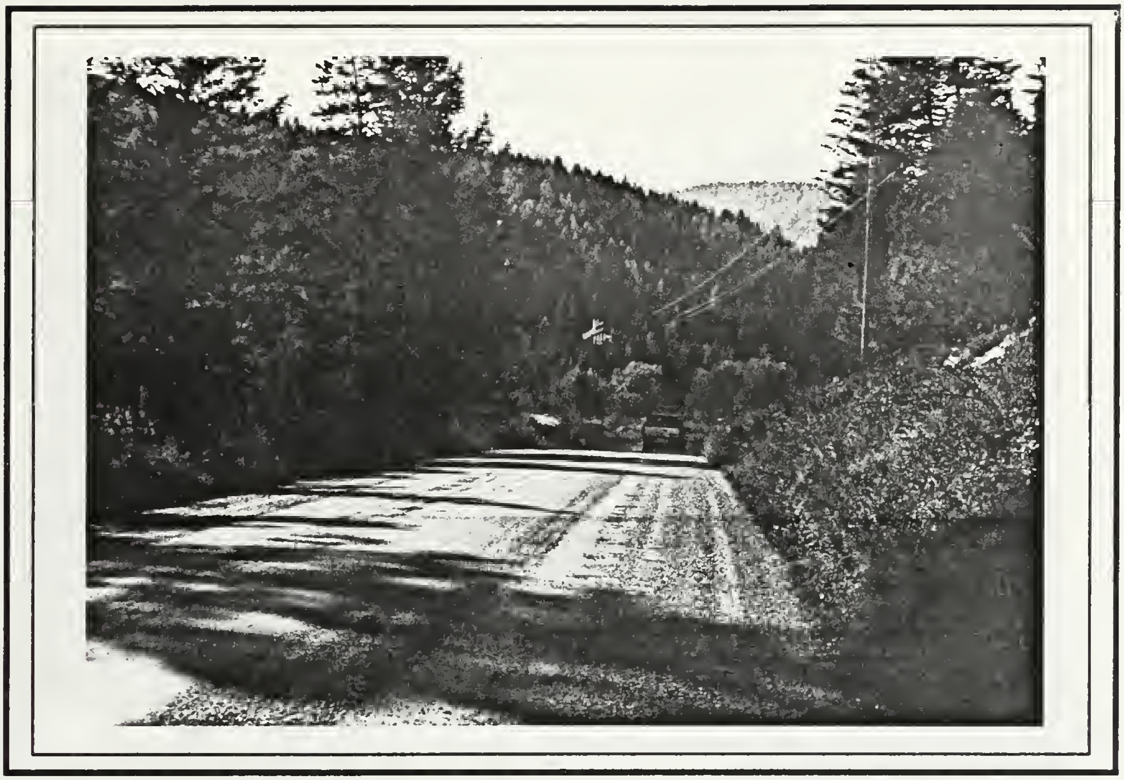
The Foys Canyon Road study area is located roughly 3.6 kilometers (2 miles) south of Kalispell. Contrary to its name, the topography of the immediate vicinity is a compilation of modest conifered hills whose lower reaches are typified by meadowed footslopes presently used for irrigated haying and grazing practices. The land form also contains two creeks, Birch and Patrick.

While the nearby city of Kalispell has an urban character that features residential, commercial and industrial development, the unincorporated portions of Flathead County still maintain a rural quality. The study area is characterized by development that is predominantly low-density residential and relatively unobtrusive. The visual character of this area will change over time as agriculture, forests and open spaces give way to residential development. The study area and surrounding Flathead Valley is bordered by the Swan Mountain Range on the east, the Whitefish Range on the north, and the Salish Mountain Range on the west (see Figures 4-9 and 4-10).

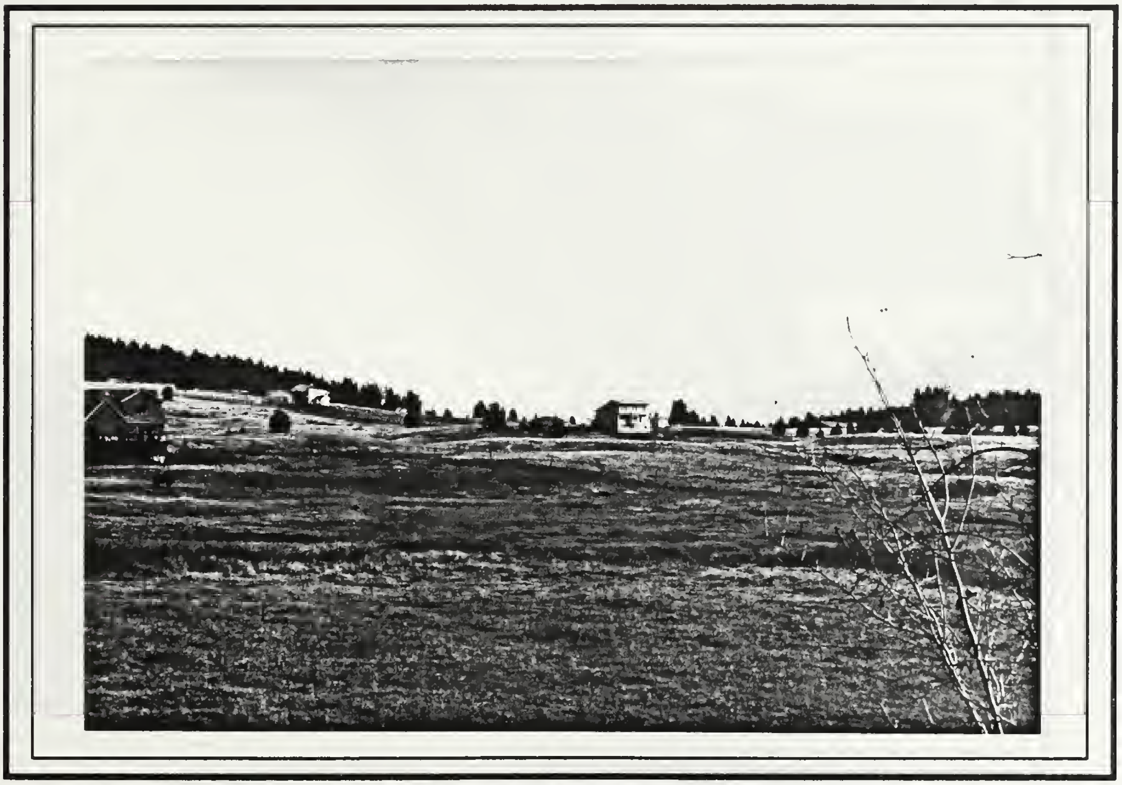
4.15.1 Existing Conditions

Landscape units are those visible areas of distinct visual character which contain similar landscape elements that are different than other distinct areas. These landscape units are mapped in Figure 4-11.

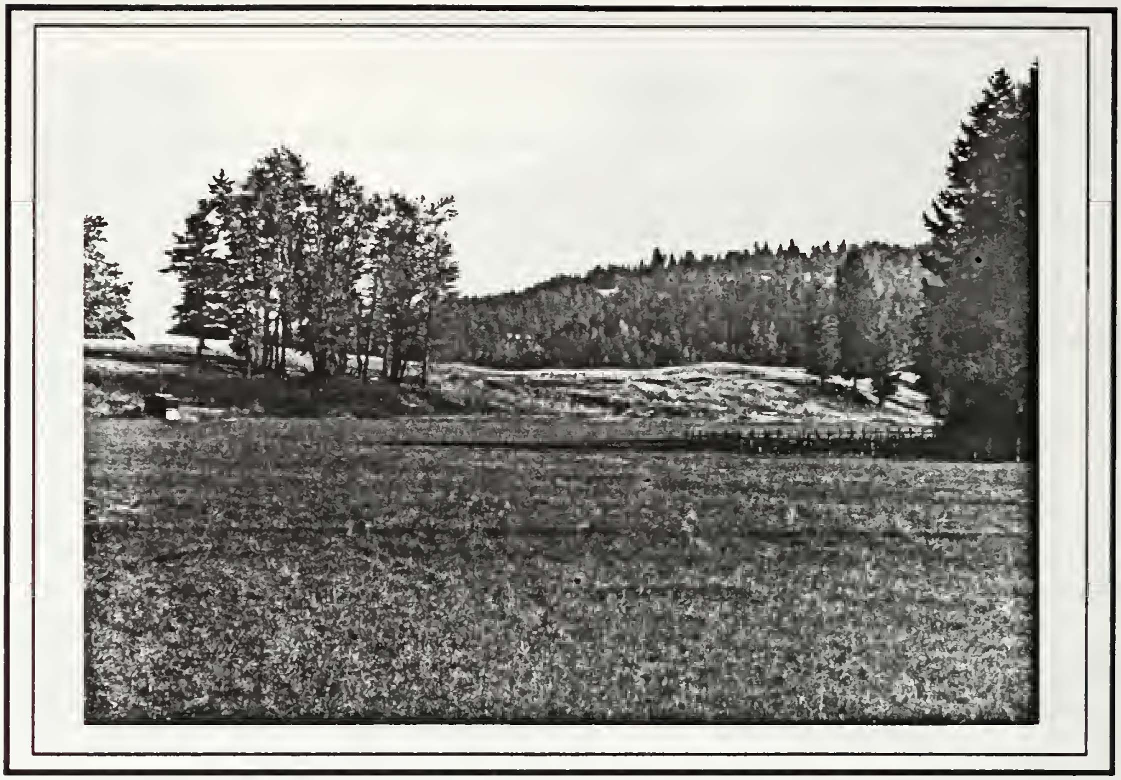
Background landscape units are all within the Flathead National Forest with mountain peaks, ranging from 1,372 to over 1,982 meters (4,528 to over 6,541 feet). Background landscape units include:



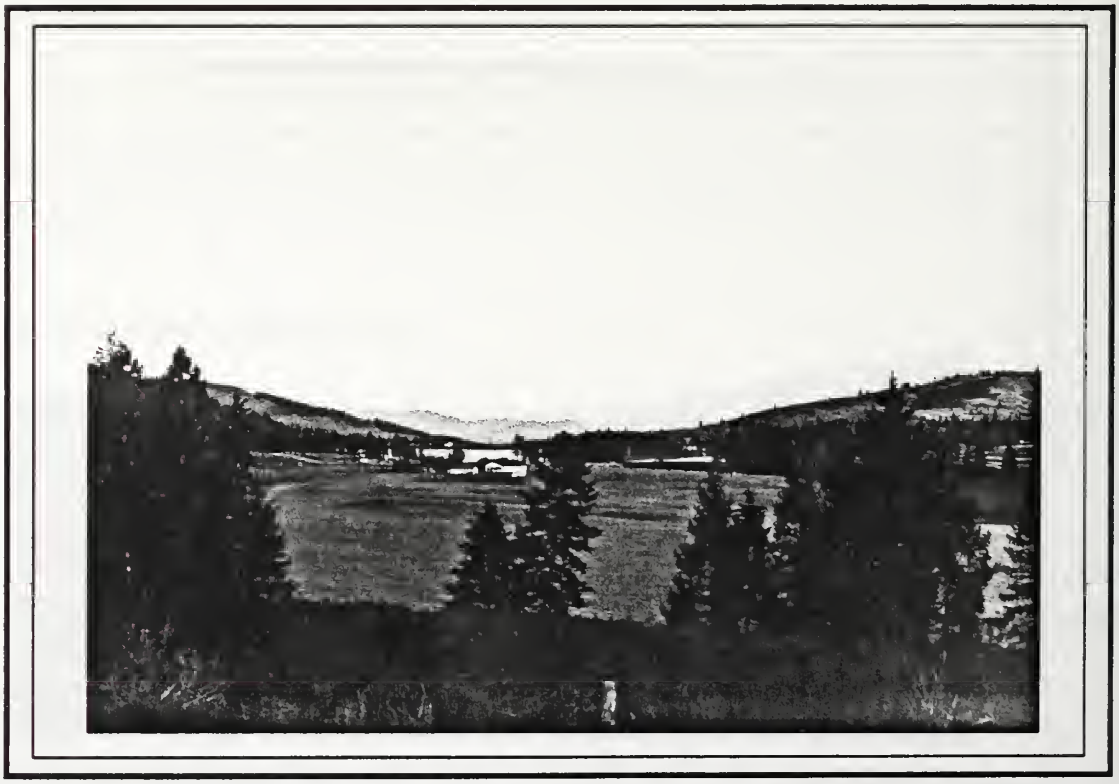
Mid Foys Canyon Road looking southeast



Mid Foys Canyon Road looking north - northeast

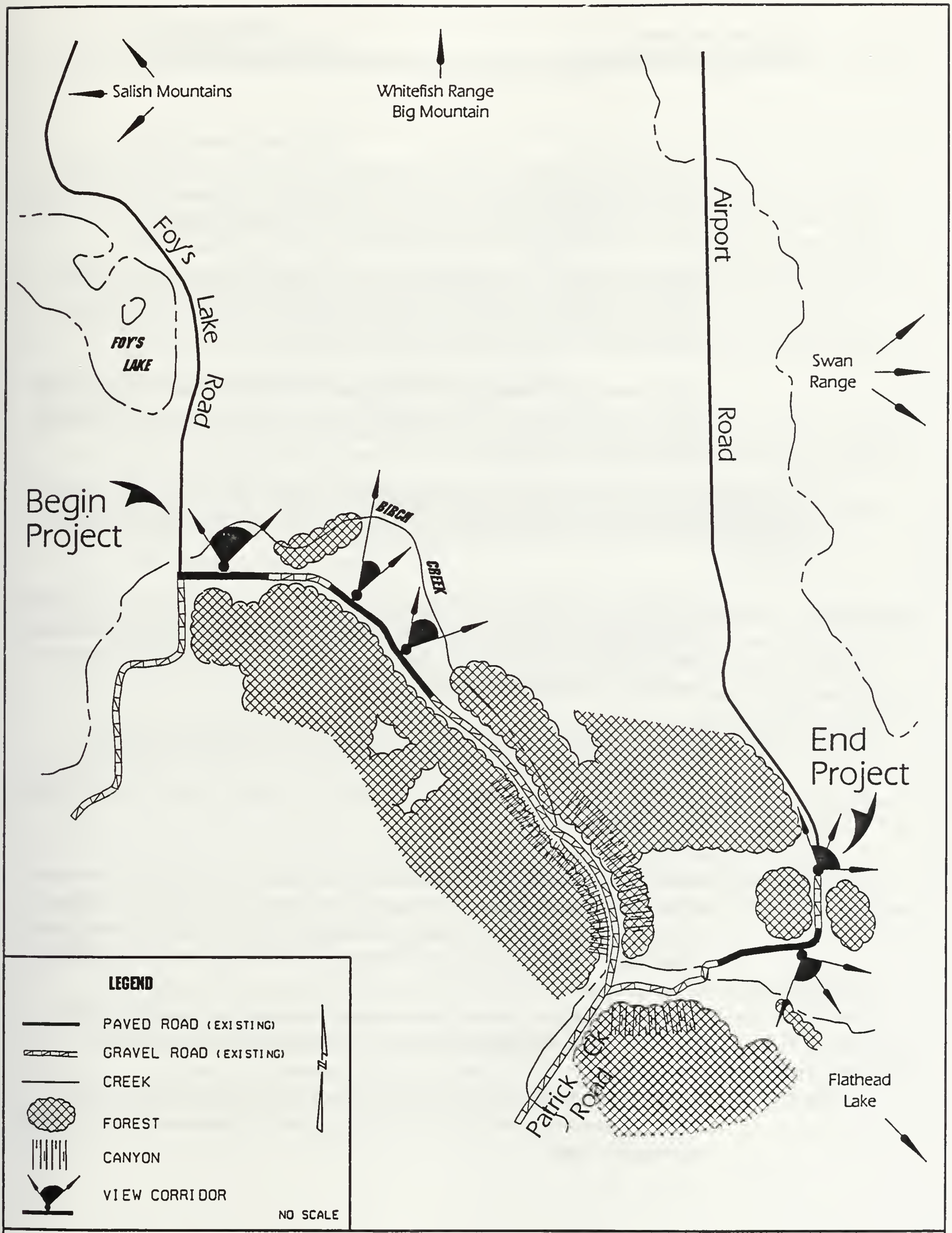


East Foys Canyon Road looking east (Swan Mountain Range)



West Foys Canyon Road looking north - northwest

Figure 4-10
Photos of Area



FOY'S CANYON ROAD

VISUAL ANALYSIS
Figure 4-11

- **Swan Mountain Range.** This range lies to the east of the Flathead Valley and is a dominant feature of several views from the roadway. This is a steep range with seasonal white-capped peaks and forested mountains.

- **Whitefish Range.** This range lies to the north of the Valley and features rounded mountain tops with the Big Mountain Ski Resort, a prominent feature visible from the east end of the roadway.

- **Salish Mountain Range.** The study area lies within the eastern edge of the Salish Mountain Range. This range features rounded mountain groupings which are mostly forested.

Foreground landscape units are those immediately visible from Foys Canyon Road. These areas describe the local character of the area. Foreground landscape units include:

- **Agriculture / pasture.** These areas are open, flat to rolling terrain, including horse pastures. Views of the background units are most visible across these areas. Most agriculture / pasture areas within the study area now support low-density, single-family houses.

- **Riparian.** Small creeks and rivers in the study area are bordered by deciduous and evergreen vegetation. Riparian areas often support a wide variety of wildlife and help to define the river corridor even if the river itself is not visible.

- **Forest.** Both the north and south sides of Foys Canyon Road are bordered by medium-density forest. These areas are characterized by pine, spruce, larch, and fir trees with the occasional stand of birch. Housing development is beginning to encroach into the forested areas along Foys Canyon Road.

- **Wetlands.** Well-defined wetlands appear throughout the study area. In some places the wetland abuts, and is contained by, the existing road.

- **Residential.** Development is characterized by low-density, single-family homes. Residential land units are characterized by homes, subdivision roads and outbuildings.

Study Area Description

This description begins at the west end of the proposed project and moves east. The background view from the western entrance is characterized by the Whitefish Range (Big Mountain) to the north and the Salish Mountains in the mid-ground view to the west. Looking north, it is also possible to see Foys Lake, although it is not a dominant feature of the landscape. Views of these mountains are seen over relatively flat open spaces. The Foys Community Center is located in the southwestern corner of the intersection of Foys Lake and Foys Canyon Roads. Wetland Site #1 is located inside the first curve where the road begins to head south.

Moving east, medium-density forests begin to dominate the south side of Foys Canyon Road. The underlying form is that of rolling hills. The north side of the road remains fairly open with gently rolling pastures, open spaces, and low-density residential development. It is over these spaces that the Swan Mountain Range is occasionally visible. These visual characteristics continue as the road works its way southeast towards Foys Canyon proper.

Foys Canyon begins roughly half-way through the project and continues to the junction of Foys Canyon Road and Patrick Creek Road. Where the grade allows, the canyon is forested and views are limited to the immediate foreground. The canyon walls are vertical in places where Foys Canyon Road begins to travel due south. This section of road is mostly shaded and views are dominated by granite rock and evergreen forest. Wetland Site #2 is located between the road and the canyon wall on the south side.

The road opens considerably as it exits the canyon and begins to head east. This final section is mainly open on the north with sporadic groves of trees and residential development. The end of the project roadway offers eastern views of the Swan Mountains. Patrick Creek, which supports riparian growth and animal habitat, runs through this section and crosses Foys Canyon Road. Wetland Sites #3 and #4 are also located in this last portion of the proposed project.

Generally, the character of the study area can be described as low-lying agriculture / pasture / residential development surrounded by mountain ranges and forest land. Driving the existing Foys Canyon Road offers a variety of pleasant views from pastoral to panoramic. However, the visual quality of this immediate area is not static, and will change as development continues and natural features give way to housing and landscaping.

4.15.2 Visual Impacts

Visual impacts associated with this project can be described in terms of views from the roadway and views of the roadway. Visual impacts were evaluated based on the predicted response of viewers to any changes. Known concerns about visual impacts are:

1. Concern about change to the existing visual character of the area.

2. Concern about addition of new paved surface to the landscape (both positive in terms of a reduction in dust and negative in terms of overall change in rural character).

There will continue to be visual impacts associated with dust created by the existing gravel surface road with the No-Build alternative.

Visual impacts as a result of the Preferred Alternative include:

1. Short-term construction-related impacts, including dust and debris, stockpiling of excavated material and removed vegetation, and the presence of construction equipment and material.

2. Expansion of roadway width. The motorist's view of the road with the foreground element of broader pavement will be different from that provided by the existing road. As shown in Figures 2-4 and 2-5, the Preferred Alternative will increase roadway width from approximately 6.0 meters (20 feet) to a paved width of 8.4 meters (28 feet). This change will be perceived as a noticeable difference in visual character.

3. Introduction of a paved surface. A black-top smooth surface will replace the uneven, earth-colored gravel surface. Dust associated with the existing surface will no longer be visible.

4. Cut and fill sections. Noticeable visual impact will occur in areas where the expanded roadway does not fit well with existing topography. The majority of Foys Canyon Road is generally flat, so there will be minimal conflicts with existing topography. There are four locations where excavations made by the Preferred Alternative will visually alter the adjoining landscape. Relative to the bulk of the proposed construction, the sites detailed below will require substantial earth removal:

- Where Foys Canyon Road runs virtually east/west, both sides of the road will require excavation.
- Excavation will take place on the north side of the road as it enters the north end of Foys Canyon.
- Beginning at roughly the middle of Foys Canyon and extending southwest to the canyon's end, both sides of the road will require excavation.
- As Foys Canyon Road turns due north to meet Airport Road, a short section will require excavation on both sides.

5. Expanded right-of-way including the clear zone. There are some locations where there will be a change in visual character associated with the expanded right-of-way or clear zone. This will be most apparent in the forested locations at the east end of the project where Foys Canyon Road turns north, and throughout the mid-section of the project where Foys Canyon Road runs northwest to southeast.

   Mature vegetation will be removed in some locations, resulting in a loss of the sense of enclosure provided by large trees. Some of this vegetation has already been removed in the area just east of the canyon.

6. New alignment segments. The Preferred Alternative moves away from the existing alignment in several areas. The new alignment will traverse through some pastures and stands of mature trees. This will change the visual character of the area.

4.16 Construction Impacts

The No-Build alternative will have no construction-related effects.

There are several impacts associated with the construction of the Preferred Alternative. The construction-related impacts include:

- **Noise and Vibration.** The operation of various types of machinery, such as heavy earth moving equipment, paving equipment, power tools, pile drivers, and trucks, in close proximity to residences will create an undesirable noise condition. Impacts from vibration are also likely during the construction period.

- **Fugitive Dust.** The operation of heavy equipment on exposed soils may result in the release of fugitive dust into the air.

- **Erosion and Sedimentation.** Runoff from areas of exposed soils may affect water quality of Patrick and Birch Creeks. Sedimentation may occur when eroded soils collect in areas below the construction site.

- **Water Quality.** Concrete construction within the river channel creates an opportunity for the release of contaminants to the watershed. Petroleum materials can be spilled during the operation and maintenance of construction equipment.

- **Visual.** Stockpiles of earth materials, stacks of construction materials, and parked equipment may cause a temporary visual impact to the residents near the locations of construction activities.

- **Access.** Local access to intersecting roads and to residences will be maintained during construction. However, limited access and minor detours will be necessary at certain locations during this period.

4.16.1 Construction Mitigation

Construction impacts will be mitigated through implementation of control measures during construction. These measures include:

- Limit noise-generating construction activities to occur between the hours of 7:00 AM and 5:00 PM near residential areas to minimize noise impacts.

- Require the use of appropriate dust suppression measures to minimize dust impact associated with the construction activities.

- Require erosion control methods, such as temporary and permanent seeding and mulching, within a reasonable time after the soil is disrupted.

- Require sedimentation control methods, such as check dam, silt fences, and sedimentation basins along drainage routes and adjacent to sensitive areas.

- Require that the contractor implement an approved water quality control plan, so that appropriate measures are in place in the event of an accidental spill.

- Designate a suitable construction staging area, and require that the contractor store materials and equipment within that area to minimize the visual impact.

- Develop construction staging and traffic control plans that minimize the disruption to traffic and access.

- Provide adequate public notice and maintain coordination with area residents to keep the public apprised of the construction progress and to warn of closures and detours.

4.17 Permits Required

The following permits or coordination will be required for the Preferred Alternative and will be obtained prior to any relevant disturbance:

- Section 404 Permit. The MDT must obtain a Clean Water Act: Section 404 Permit from the Corps of Engineers.

- Section 401 Water Quality Certification: The MDEQ Water Quality Division must certify that any discharges into state waters will comply with certain water quality standards before federal permits or licenses can be granted.

Floodplain Development Permit: A floodplain development permit from Flathead County will be required for road construction and placement of fill in floodplains.

- 124 Stream Protection Act: This permit is needed from the Montana Department of Fish, Wildlife and Parks to maintain the quality of streams and fisheries affected by roadway construction.

5.0 Comments and Coordination

The Foys Canyon Road Project has included a substantial amount of public and agency input. Appendix A includes meeting minutes for meetings held, copies of the newsletters and handouts. Appendix B includes letters of correspondence from cooperating agencies involved with this project.

5.1 Public Involvement Activities

The following public involvement activities were conducted:

- Two general public meetings.
- Two newsletters or handouts.
- Several meetings or contacts with agencies or individuals.
- Active solicitation of letters or telephone calls.

General public workshops were held on the following dates:

- November 15, 1995
- February 7, 1996

The First Public Workshop (on November 15, 1995) was attended by 50 people. The purpose of this meeting was to introduce the project and obtain input on the alternatives and issues. Public issues which were brought up at this meeting included questions about the need for the project, concerns about possible project impacts, and concerns that the current roadway is unsafe. Problems with the existing road included dangerous curves, signage, and dust. Concerns about traffic and high speeds were also raised. Concerns about possible project impacts included effect to rural quality of life, wetland impacts, floodplain impacts, wildlife impacts and visual impacts.

The Second Public Meeting (on February 7, 1996) was attended by approximately 35 people. Public issues addressed at this meeting included questions about the need for the project, concern that the current road is unsafe and needs to be improved (dust, potholes, and dangerous curves were mentioned), concern that design should minimize impacts to property owners, wildlife, farmlands, floodplains, and wetlands, and concern about increased traffic/speeds on the road was expressed.

Meetings have been held or contacts have been made with the following agencies:

- Flathead County Regional Development Organization
- Natural Resource Conservation Service
- Montana Department of Fish, Wildlife and Parks
- US Fish and Wildlife Service
- Flathead County Commissioners
- Flathead Road and Bridge Department
- Montana Department of Transportation

Numerous (over 45) comment letters, comment sheets or telephone calls have also been received about this project. Issues raised included: questioning the need for the project, concern that the roadway is unsafe, concern that any improvements made should minimize impacts to property owners and the environment, and concern about increased traffic/speeds.

5.2 Remaining Public Involvement

A Notice of Availability of the EA and the planned date for the Public Hearing will be announced in *The Daily Interlake* newspaper and will be mailed to people on the project mailing list at least 14 days in advance of the Hearing.

At the Public Hearing, the general public will be given the opportunity to provide official comment on the project. Written comments, to be included as an official part of the record, will be accepted for 30 days following the Notice of Availability.

This environmental assessment was prepared pursuant to the National Environmental Policy Act and the Montana Environmental Policy Act. The state statute can be found in section 75-1-201, et seq., MCA. The regulations are found in ARM 18.2.201 et seq.

6.0 List of Preparers

The following individuals had responsibility for preparing this document:

Name	Project Responsibility	Education/Experience
Mike Worrall, PE	Civil Engineer	BS, Civil Engineering. Thirteen years of experience in roadway planning and design.
Jeremy Keene, E.I.T.	Civil Engineer	BS, Civil Engineering. Three years of experience in planning, design, and construction of transportation facilities.
Kathy Harris, PE	Traffic Engineer	BS, Civil Engineering. Thirteen years of experience in planning, design, and construction of transportation facilities.
Jeanette Lostracco, AICP	Project Manager	BA, Geography; Masters of Business Administration. Seventeen years of experience in environmental analysis.
Gina McAfee, AICP	Environmental Analysis	BS, Landscape Architecture. Twenty years of experience in environmental analysis.
Quint Redmond	Environmental Analysis	BS, Geology; MS, Urban & Regional Planning and Landscape Architecture. Five years of experience in natural resource analysis.
Scott Richman, AICP	Environmental Analysis	BA, Environmental Design. 5 years of experience in environmental analysis.
Jared Moore	Environmental Analysis	BA, Geography. Nine years of experience in environmental analysis.
Andrew Gibson	Environmental Analysis	BA, Business Administration; MS, Urban & Regional Planning. One year of experience in environmental analysis.
Robert Harris, Turnstone Biological	Biological Resource Report	BS, Wildlife; BS, Fisheries. 20 years of biological analysis.
Kathy McKay, Tracks of the Past	Cultural Resource Report	MA, American History. Five years of experience in cultural resource inventories and assessments.

Name	Project Responsibility	Education/Experience
Ginger Thomas, Ginger Thomas Consulting	Biological Resource Report	BA, Geography; MS, Wildlife Biology. 13 years of biological analysis.
Julia Pruett, Carpenter Dunlap, Assoc.	Graphics	BA, Fine Arts. 14 years of CADD and graphic experience.

Appendix A

Meeting Minutes, Newsletters

Meeting Minutes
Foy's Canyon Road
First Public Workshop

Wednesday, November 15, 1995
5:30 - 8:00 p.m.
Outlaw Inn, Remington Room
1701 Highway 93 South
Kalispell, MT 59901

The First Public Workshop for Foy's Canyon Road was held in Kalispell, November 15, 1995, at the Outlaw Inn, Remington Room. 50 people attended the Workshop (sign in sheets attached). The workshop was open-meeting style, no formal presentation was given. Project information was available to the public on the sign in table (listed below). Comments were received from the public on 5 x 8 cards which were immediately displayed in the comments section wall area for the public to view and/or comment on. All officials responsible for the project were available throughout the evening to answer questions, receive comments, and talk with the public about any concerns they may have regarding the project.

Project officials present:

Jeanette Lostracco, Carter & Burgess (Denver)
Gina McAfee, Carter & Burgess (Denver)
Mike Worrall, Carter & Burgess (Missoula)
Kathy Harris, Carter & Burgess (Helena)
Jeremy Keene, Carter & Burgess (Missoula)
Stefanie Jakober, Carter & Burgess (Missoula)
Joe Murphy, Carter & Burgess (Missoula)
John Marron, Montana Department of Transportation (Missoula)
Dave Dreher, Montana Department of Transportation (Missoula)
Gordon Stockstad, Montana Department of Transportation (Helena)
Bill Squires, Montana Department of Transportation (Helena)
Dale Paulson, FHWA

The following information was available to the public on the sign-in table:

Agenda for the evening (attached) which explained in detail the process for the meeting as well as information on how to provide input at the meeting;

Foy's Canyon Road Public Workshop Handout (attached) explaining the purpose of the meeting, the project process, a map of the study area, an explanation of the need for the project, contents of a NEPA document, names, addresses and phone numbers for comments, and a project schedule.

Foy's Canyon Road Newsletter (attached)

Comment Sheet (attached)

The seven wall displays were as follows:

1) Study Introduction (visual cards were displayed in 6 rows)

Row 1: Purpose of Meeting:

Provide a description of the process
Describe transportation needs
Obtain input on MDT Design
Determine if changes to this should be explored
Obtain Input on environmental issues

Row 2: Project Process

Define purpose and need
Define alternatives
Assess impact of alternatives
Prepare NEPA document
Obtain agency and public comment
Select preferred alternatives

Row 3: Content of NEPA Document

Define purpose and need for project
Describe alternatives (no build; build to federal standards; other)
Land use impacts (existing land use change; induced development)
Farmland Impacts (displacement of prime farmland)
Social impacts (impacts on school districts, recreation areas, churches, police & fire protection)
Relocation impacts (right-of-way; 40 of 46 parcels have been purchased for right-of-way)
Economic impacts (effects on development)

Row 4: Endangered Species:

- Closest known bald eagle nest is 3-miles away
- Historic & archeological (survey was conducted and no historical archeological sites were identified)
- Section 4(f) - (impacts to parks on historic properties)
- Hazardous materials (such as leaking underground storage tanks, dumps, etc.)
- Visual impacts (changes to visual character of the land)
- Construction impacts

Row 5: Transportation Impacts

  - Pedestrian & bicycles
  - Traffic increases
- Air Quality Impacts
- Noise Impacts
  - Reduced noise
  - Change from existing conditions
- Water Resources
  - Till in drainages
  - Water quality impacts
- Wetlands
  - Fill in wetlands
- Wildlife & Fisheries
  - Hawk, elk, white-tailed deer, red-tree squirrel, stellar's jay, snowshoe hare
- Floodplain Impacts

Row 6: Public Involvement Opportunities

- Public Workshops (Nov. 1995, Jan 1996, Feb. 1996)
- Newsletter (set to people in mailing list)
- Public Hearing (Spring 1996)
- Telephone Calls/Letters (Jeanette Lostracco & Gordon Stockstad)

2) Project Needs:

- Map - 1985 through 1994 Accident Concentrations
- Map - Traffic Data
- Determined Needs:
  - Reduce Accidents (head on, sideswipe, truck)
    - Accidents per million (Graph showing state average at 1.88 & Foy's Canyon average at 11.08)
  - Reduce Maintenance Costs ($8500/year to gravel surface)
  - Accommodate anticipated growth in area

        Average daily traffic (Graph showing the year 1994 at 310 & the year 2015 at 950)
        Increased recreation access to Patrick Creek area
    Upgrade connection with Airport Road (visual drawing)
    Improve inadequate sight distance (visual drawing)
    Improve open area for recovery zone (visual drawing)

3) Environmental Needs

Map - Noise Monitoring Locations
    School Bus Stops
Photo Display - Existing Visual Character of Foy's Canyon Road

Wall Display Listing the Known Environmental Issues:
- Change in visual character
- Potential increase in traffic speeds
- Potential wetlands impacts (visual drawing)
- Noise impacts (individual residences & church
- Parks (visual drawing)
    - Herron Park
    - Foy's Center
- Potential for Right-of-way needs
- Others? (Unknown at this time)

4) Future Use Plans

Map - Master Plan Map - Flathead County, Montana, Year 2000
Map - Kalispell City County Planning Jurisdiction - Master Plan Map, Year 2010.

5) Montana Department of Transportation Design

Aerial Photo Display of the roadway design prepared by MDT, shown as a black line alignment along the existing road.

6) Project Schedule

Blow up of Newsletter Project Schedule Graph
Card Display of Project Schedule:
- Data Collection
- Define alternatives (Oct. - Jan.)
- Impact Assessment (Dec. - Feb.)
- Prepare NEPA Document
- Public Hearing (Feb. - April)
- Prepare Final Decision Document (May - June)

7) Comments

Air Quality/Dust

The dust is so thick that you can't see the front of the truck.

Dust is a major problem

Dust is big problem

Dust lays in the canyon all night

Dust is hazardous to us living just off roadway - if smoke from log burning is prohibited, why not dust?

People probably just want the dust gone or the pot holes gone.

Dust is horrible

Dust is dangerous. When it is very dusty it is hard to see and is unsafe.

Current MDT design is best. This needs to be constructed. Blind curves and dust need to be eliminated.

Dusty and bumpy conditions exist.

Dust is a problem. Just pave the road so there is no dust.

Dust is a problem but the rough roads are not a problem.

Would like to see reduced dust - it is very dusty in the summer.

Dust is killing us. Would like to see the road built as designed.

Dust is a problem in valleys. Dust is a major problem. Landowners have been oiling the road in places.

Economic/Funding:

Why is this project being started again - spending even more money on a road that goes nowhere?

Need to use federal dollars to fund the project.

There is no way the county will ever have enough money to do this project.

How much money has been spent to date?

Concern that it will be a costly project because of the narrow canyon.

Funding priority should go to other roads like U.S. 93.

This is all a waste of money.

Thinks money should go to another roadway such as Big Mountain.

How much has this road cost up to November 1995? Total?

Who was responsible for this project and the waste of tax dollars?

When does the project become irrevocable by the state, county, etc.?

Who is accountable for the $200K spent? Why were we lied to up to last minute?

Maintenance costs should be compared to engineering costs.

Very recently this process was shelved after $300,000/loss. (The state says that the county wants the road and the county commissioners say state is blackmailing them by saying county has to foot the loss.)

Why are we planning to spend $500K here?

Doesn't think Foy's Lake Road should be a high priority. The money should be spent somewhere else.

What will happened if the road isn't built? What will MDT do with the right-of-way that was purchased?

How much has been spent for the design and other work done for this project? Taxpayers need to know this.

Don't give back the money - move it forward.

How much would maintenance on a paved road cost? Repaving/overlay cost is about $14K per mile and last for 5-7 years.

Construction:

When does the construction happen?

Traffic/Speed:

People travel 50-60 mph now on the road. They can't go much faster on a paved road.

Concerned that paving will increase speed - kids use Foy's Lake, Foy's Canyon and Airport Roads as a loop for races.

Concerned that it will be super highway with speeders after it is paved.

There are a lot of accidents because of high speeds - 50-60 mph.

Concerned about speeds above 35 mph.

Traffic/Volume:

Put March 23, 1995, videotape in record. It indicates the low road usage.

Concerned that the improvements will increase emergency access.
Traffic volumes don't make sense - why so many on Airport Road and so few on Foy's Canyon Road?

Improvements will not directly increase traffic volumes.

Concerned that the planning document show the necessity of the proposed highway with only 300 cars per day when other county secondary roads that are not under consideration carry daily traffic loads of 2600 (Whitefish Stage Road) cars per day and 4000 (Big Mountain Road) cars per day

Will there be traffic diversion as a result of the improvements? Feels the project will improve emergency vehicle response time.

Traffic/Safety:

Concerned because a school bus that slid backwards down the canyon.

The roadway needs to be improved for school bus safety.

I want the road black topped and to straighten out the worst curves.

Existing roadway is slick at creek crossings, especially the first curve (south of the S-curve)

Document should show accident cluster sites.

Roadbed itself north of the church is so soft people get stuck - need a 4-wheel drive vehicle on the road.

Tight turns just north of church are a problem - taking turns out would be good.

Canyon is curvy and blind especially at Patrick Creek corner. S-curve across Patrick Creek is somewhat dangerous.

Every winter we have had over-turned vehicles in our yard.

The corner just south of Orchard Ridge has a lot of accidents.

The road needs to be constructed. Blind curves and dust need to be eliminated.

I have been in Orchard Ridge for seven years and have seen four rollovers on the road.

Consider mildly cutting off curves to increase safety on the road. The safety needs to be improved.

What are the accident statistics for secondary roads?

The church corner has a lot of accidents

Safety is important - a bus with 15 children slid back in canyon and almost turned over.

Concerned about accidents at church corner. Has witnessed accidents in several other places also.

The road can be a dangerous road - blind curves.

Concerned about safety of wildlife and kids.

Estimate that 80% of the accidents are not reported

Concerned that speed increases will kill deer and other wildlife

Should make sure the document includes illustration/analysis of accident "cluster sites"

Concerned that improvements will increase speed resulting in much more traffic, i.e., logging trucks

Experienced lots of accidents - near head-ons and lots of near misses.

Stop sign at Patrick Creek Road is needed

School bus almost slipped and skidded off the road.

Water comes up on the road in the canyon section of the road in the spring.

There are lots of unrecorded accidents on the road.

Need to straighten curves for safety and accommodate increased traffic due to the residential growth.

We believe that the traffic pattern change due to the significant change in the width of the road will create a significant impact on adjacent lot holders.

Curves need to be straightened, but try to minimize impact to property owners.

Curves of Patrick Creek Road are the worst for school bus. Combination of hills & ice is bad.

Concerned because he drives school bus route. Looking forward to seeing it improved because he was almost sideswiped several times.

Numerous unreported accidents and slipping off of the road.

I see numerous accidents per year at Orchard Ridge North. Probably average one accident per week.

If there is a concern about speed, then post some reduced speed limits. None are posted now.

Concerned about the school bus treatment at Patrick Creek - make Patrick Creek a 90 degree intersection (concerned about kids)

Most of the Orchard Ridge traffic goes to Foy's Lake Road

Concerned that improvements will result in increase in traffic in the middle.

Should add a stop sign to Patrick Creek Road intersection. (Sketch A)

Can't see past logging trucks. Have been run off the road a few times.

Road is too dangerous and too narrow now.

On-going maintenance is a problem - lots of pot holes.

Environmental (Wildlife, Wetlands & Aesthetics):

The meadow near Patrick Creek junction is a nice area. It would be a shame for the road to go through there.

Concerned that improvements will change character from a country road to a major road (it should retain a natural state)

Stream bed alteration should be disclosed in the document for the 124 permit.

Concerned that speed increases will kill deer and other wildlife

The wildlife should be preserved (it is a game preserve)

Concerned about impact to wetlands. You should not fill these in.

We object to the significant impact on human environment and ask for alternative to the 120 feet wide 55 mph right-of-way.

Should make sure that you really evaluate alternatives to wetlands impact.

FEMA has not done a floodplain study on these river. (Hydrology)

Why wasn't the NEPA process followed from 1984?

Concerned about Lone Pine Wildlife Refuge which is on the north side.

Want to know if the entire wetland areas will be destroyed or just part of them? Need to try and keep some undisturbed wetlands.

Ponds were built in early 1900's at Kessler Ranch. Ponds don't function as well now and are weed filled. They were built for irrigation.

Avoidance of wetlands should be the 1st alternative (by law). It is not good to eliminate wetlands - okay if it is replaced.

Up-canyon - groundwater/springs on the road causes grade problems.

MDT should seek alternatives to significant impacts in taking 1.8 acres of prime farmland and to conduct a soils and prime farmland assessment as none has presently been done.

Social Concerns/Area growth:

Concerned that paving the road will bring increased growth to the area.

County commissioners probably thought this area would receive a lot of growth in 1985-86

The project proposes to relocate the roadway from the south edge of Patrick Creek floodplain to the center of that floodplain (same for Birch Creek). Analyze those ecologically critical areas such as floodplains and utilize the requirements of 40 CFR 1508.27(b)(3)(5)

MDOT should provide specific discussion of project modification to avoid and minimize discharges to streams and aquatic sites and to provide detailed mitigation plan to compensate for unavoidable wetlands impacts.

All encroachments on waterways need to be analyzed for impacts and the least damaging practical alternative for discharge of fill in aquatic locations selected.

Concern regarding whether we will be doing an individual 404 permit and applying redbook Chapter 11.

Concerned about safety of wildlife.

Witnessed several black bears in the area.

Concerned that wetlands ponds have been drying up. They had more water in them in 1964.

Concern that wetlands, floodway, and floodplains need to be assessed in the spring not late fall and winter when things are dried up.

MDT should seek alternative to their proposed maximum taking of prime farmland.

Classification as secondary highway

Is there any criteria to correlate volumes with secondary classification?

What are the minimum vehicle counts for secondary system?

Priority for classification of secondary roads doesn't make sense. Why this road?

Department of Transportation should have secondary roadway criteria? How did they make the selection?

What are the accident statistics for secondary roads?

Why is this a secondary road? Arbitrary standards given.

Design:

Current MDT design is best. This needs to be constructed. Blind curves and dust need to be eliminated.

Suggested turn north of trees at intersection (see sketch B) and tie after first straight line alignment.

Would like the road built as designed.

Consider T-intersection at Foy's Lake and Foy's Canyon Roads.

Want the road built as originally designed.

Make the road wide enough for a bike path.

Build the road like it was designed in the first place - too crooked and too steep. With the traffic, it needs to be engineered to safer standards.

People don't want to see a road designed similar to a Foy Lake or Airport Road standard.

Widen the road wide enough for bike use (similar to Somer's area)

Just do it! Build the road as designed.

Supports current MDT design. Would like to see the road built.

Concerned that access to Herron Park caretakers house is maintained. Need to work closely with MDT on design of this area.

Consider road re-alignment in swampy area and also the west end to eliminate intersection at Patrick Creek (drawing attached C)

Build the road as designed.

Why not put a stop sign on SB Foy's Canyon and let Patrick Creek road go through (no stop).

Why not miss the meadow and keep road on existing alignment?

Is MCA Section 1000 considered reconstruction and resurfacing - as an alternative see section 1007? Instead of new construction use same alignment.

Curves need to be straightened, but try to minimize impact to property owners.

Curves of Patrick Creek Road are the worst for school bus. Combination of hills & ice is bad.

Concerned about the school bus treatment at Patrick Creek - make Patrick Creek a 90 degree intersection (concerned about kids)

Consider T-intersections at Patrick Creek and Foy's Lake intersections.

Have not seen people bypassing Kalispell. Does not necessarily believe the road needs to be as wide as on both ends.

Should try to more of less stay on the same alignment with improvements.

Should just build the road to county standards - not federal standards.

Consider alignment north of hill which is north of Storlis property (between the home and the hill)

Misc.

Birch Creek goes up north of first curve of Canyon Road. What is the source of water? Three springs.

We support improving the road. It will provide smoother access to our property at Patrick Creek.

The road seems to contribute to the valley in Kalispell

Why is the '86 CE not adequate?

Will this effort be adequate?

Paving the existing road is not adequate.

There has been a petition passed to landowners to have Big Mountain/County pay to overlay - after 212 homeowners approved state proposal to straighten out.

A petition was signed that was misleading, several people want their names taken off.

I signed a petition and would like my name off of it.

May you could just focus the work on the curves in the middle of project.

Did the commissioners want to remove the request for improvements? In 1991?

The sooner the better - you need to get the road going.

This needs to be constructed. Blind curves and dust need to be eliminated.

Suggested straightening curve in front of church and two curves near ponds. Would donate land if project were limited this way.

Agree that logging debris needs to be cleaned up.

Surprised the project is the priority.

What initiated this re-study - why now?

Just do It! Build the road as designed.

Leave the road as is - pave at most.

If it is not rebuilt, then it needs to be fixed - focus more on marshy areas and tight curves.

Will county and state continue to juggle responsibilities as they have over the last 10 years?

Petition passed to landowners to have Big Mountain/County pay to overlay -- after 22 homeowners approved the state proposal to straighten it out.

Just get the road done!

Blacktop the existing road - take out the worst curves and leave it that way.

Why can't the county pave the road to Orchard Ridge and a mile on Airport Rd?

It would be most dangerous to pave the road as is. Need to fix the road.

There are several curves that are to tight to pave as they exist.

MCA statutes 603218 and 603217 - Reconstruction Trust Program needs to be investigated: Look at alternatives that are "reconstruction" not new construction.

Several comments: Just don't want it paved!

Gravel roads aren't necessarily bad.

Lived in Kalispell 26 years and owns 110 acres on Foy's Canyon Road. Supports road improvements strongly.

Logging debris should be removed - it is a mess visually.

Foy's Community Center would like to have additional parking if roadway curves away from it. Would like to get ownership of the land.

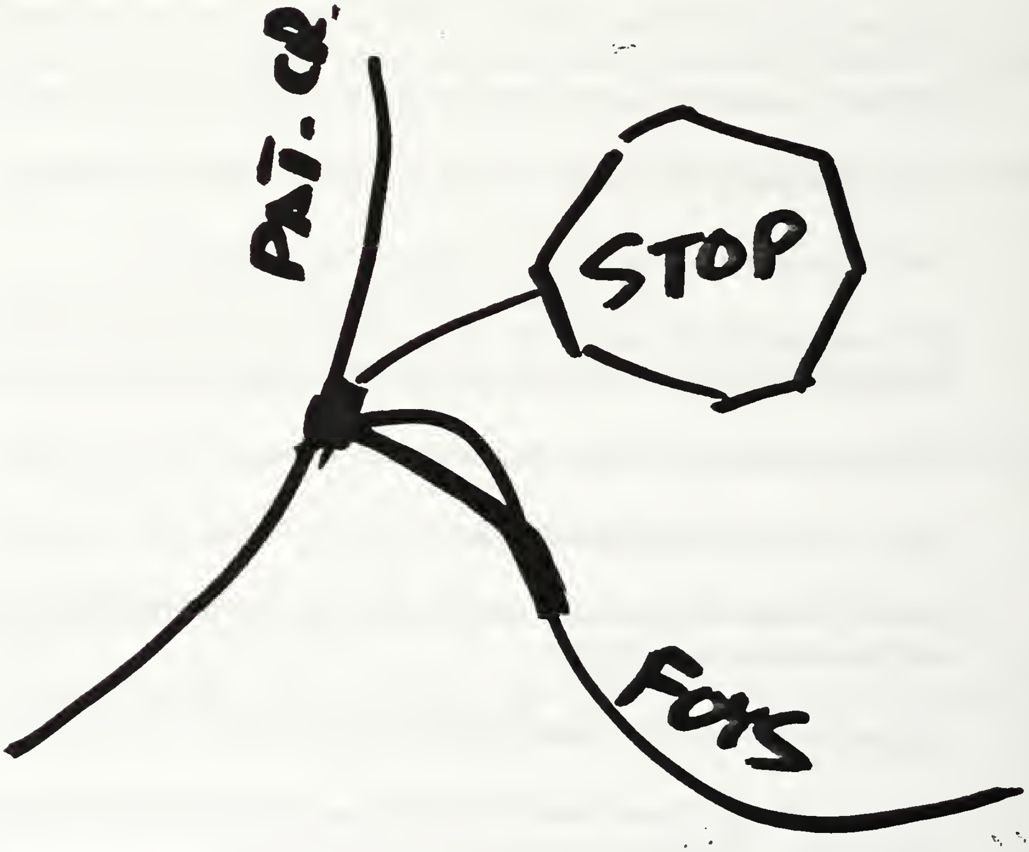
Concern about existing road abandonment at church. Previously kids had been attracted there as "hangout".

Will natural gas be run up the road?

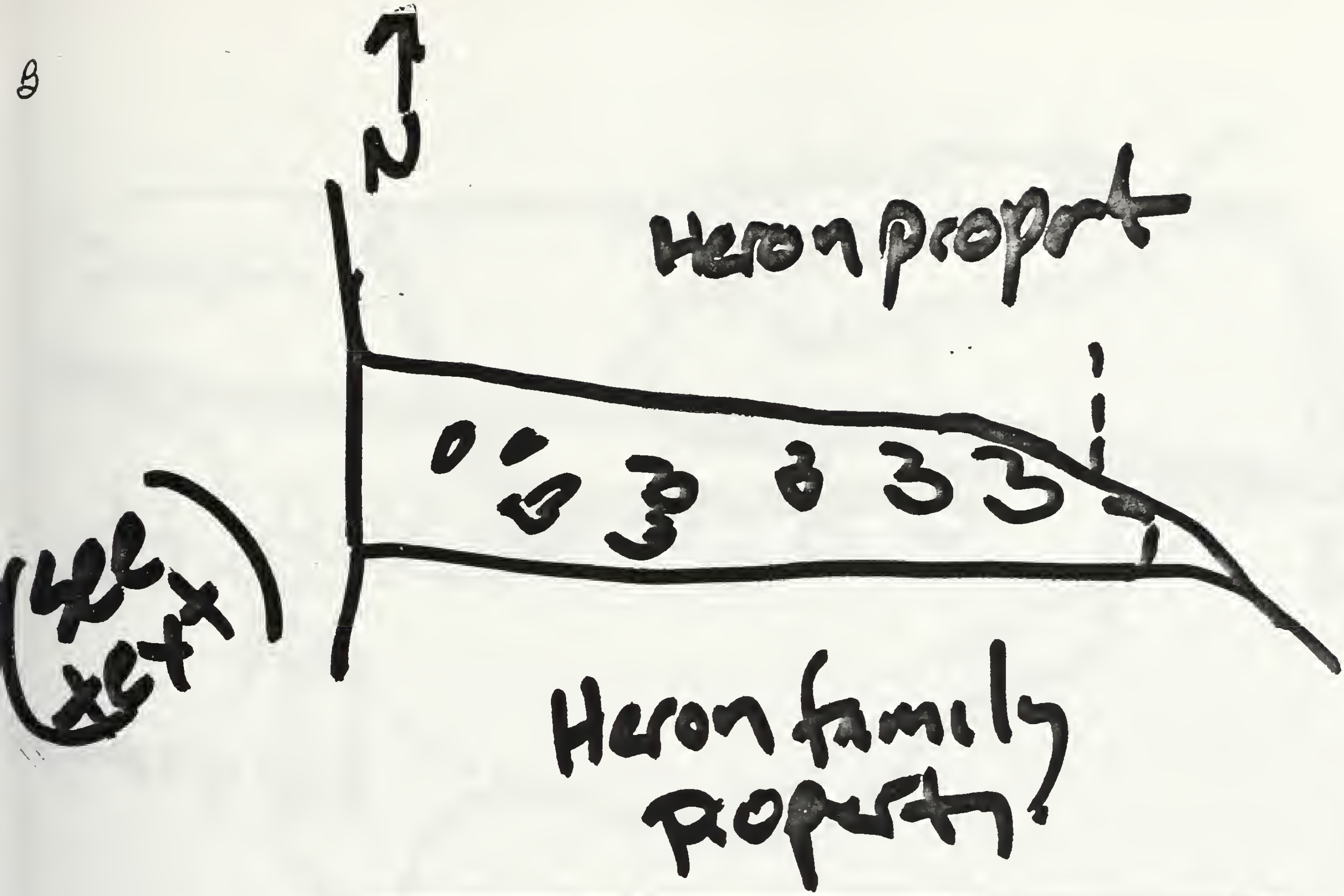
foy1127m.1jl

The following alternative alignment sketch ideas were also received at the workshop:

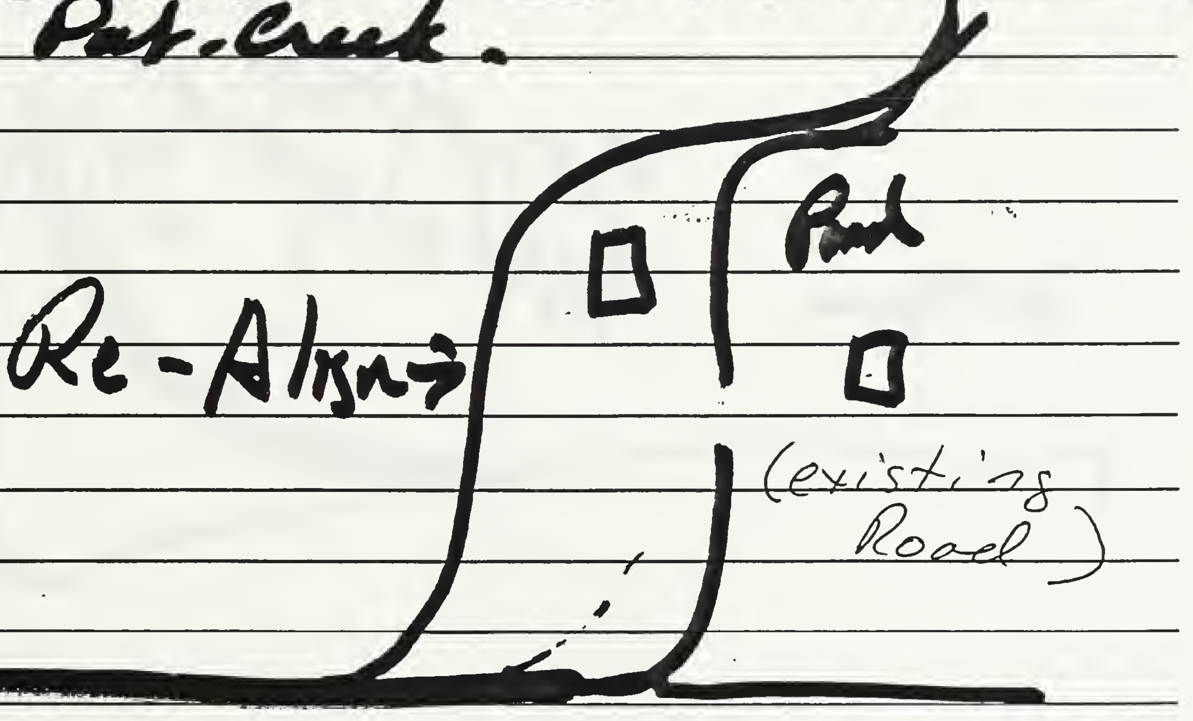
A



8



eliminate intersection at Pat. Creek.

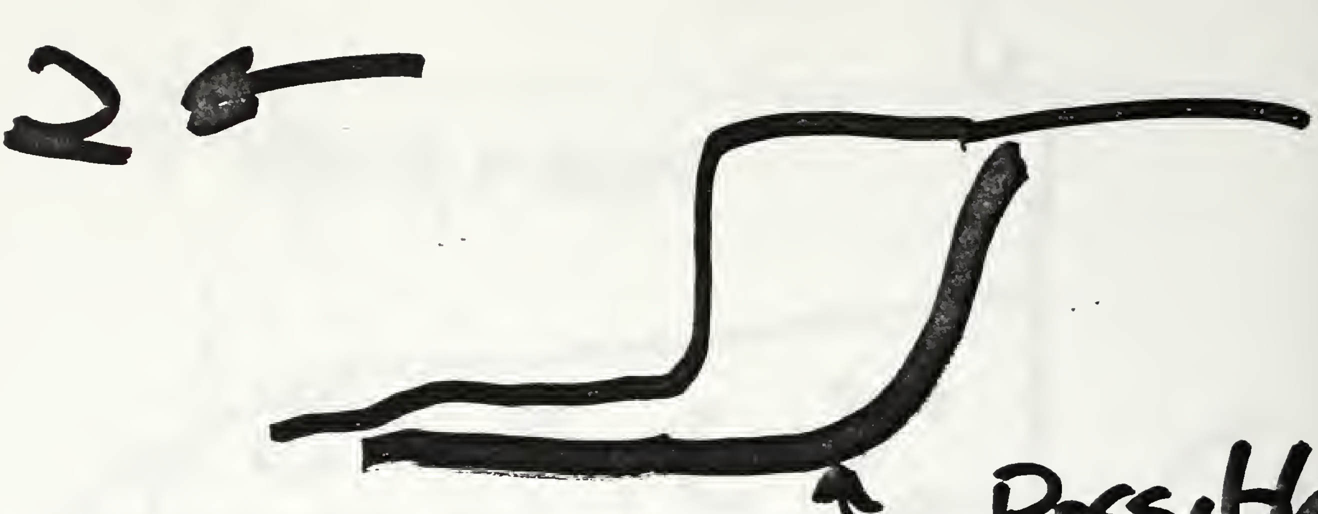


Name

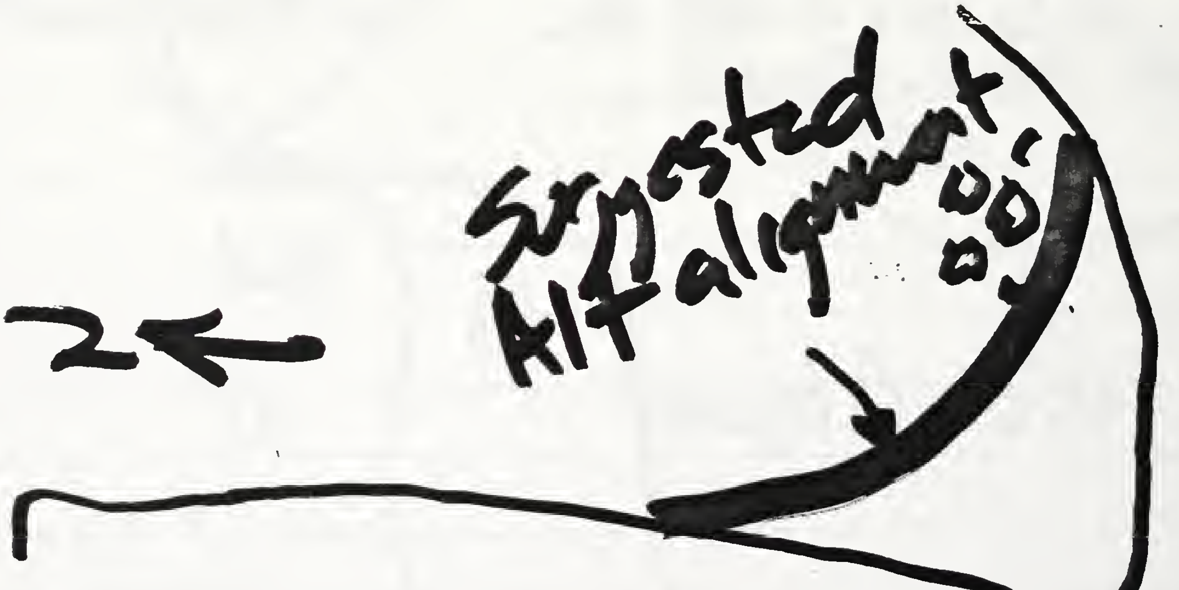
Address

Phone

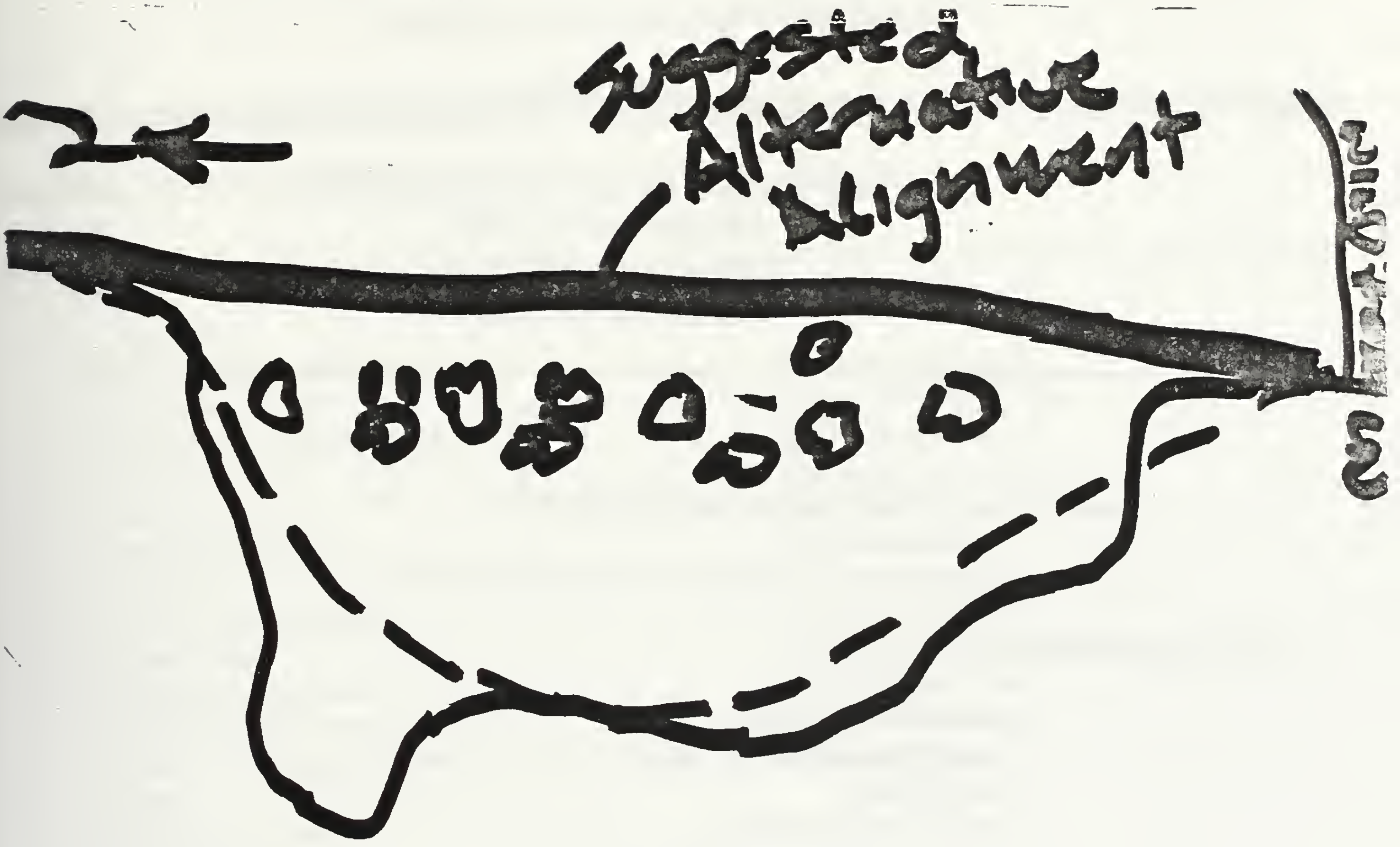
(above information is optional)



Possible Alt Alignment



Suggested Alt alignment


Suggested Alternative Alignment

AGENDA

Foy's Canyon Road Public Workshop
November 15, 1995
5:30 p.m. to 8:00 p.m.
Outlaw Inn - Kalispell

Open house Format (No Formal Presentation)

- ☐ Review graphics and information throughout the room
- ☐ Stations:
  - Introduction to Study
  - Known Environmental Issues
  - MDT Design
  - Future Land Use Plans
  - Project Schedule
  - Comments

How to Provide Input at the Meeting

- ☐ Project team members have name tags - give them your comments or ask them questions.
- ☐ Comment sheets - fill out and put in the comment box.
- ☐ Comment sheets - take home to complete and mail in.

Public Workshop Handout

Contents of a NEPA Document

Impacts on each of the following will be analyzed:

- Land Use
- Prime and Unique Farmland
- Social/Economic
- Relocation (Right-of-Way)
- Noise
- Air Quality
- Water Resources
- Wetlands
- Wildlife and Fisheries
- Floodplain
- Endangered Species
- Historic and Archaeological
- Section 4(f) (impacts to parks or historic sites)
- Hazardous Materials
- Visual Resources
- Construction Impacts

Comments?

If you have additional comments or questions, please feel free to call or write:

Jeanette Lostracco
Carter & Burgess, Inc.
125 W. Spruce St.
Missoula, MT 59802
(406) 721-1471
(303) 820-4808

Gordon Stockstad
Montana Department of Transportation
2701 Prospect Ave.
Helena, MT 59620
(406) 444-7223

Project Schedule

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
Data Collection	■	■	■						
Define Alternatives	■	■	■	■					
Public Workshop		●		●					
Impact Assessment			■	■	■				
Prepare NEPA Document					■	■	■		
Public Hearing							●		
Prepare Final Decision Document								■	■

Foy's Canyon Road

COMMENT SHEET

I have the following comments or questions about the Foy's Canyon Road project:

Name

Address

Phone

(above information is optional)

Foy's Canyon Road

Newsletter #1 November 1995

◆ ◆ ◆

Environmental Process Initiated

The Flathead County Commissioners have selected and prioritized Foy's Canyon Road for secondary roadway improvements. In response to the Commissioner's prioritization, the Montana Department of Transportation has hired Carter & Burgess, Inc. to initiate the process for assessing impacts of the proposed improvements.

The National Environmental Policy Act (NEPA) process and document will examine environmental impacts of the proposed improvements. If appropriate, modifications to the design discussed with the public at various meetings over the past several years will also be examined as part of this process.

◆ ◆ ◆

Get Involved!

An important part of this study is a public involvement program to inform citizens of the environmental process, progress, and results, and to provide an opportunity for residents to express their concerns and ask questions.

This newsletter is the first for the Foy's Canyon Road project and announces the first of three public meetings. The first workshop is scheduled for:

Wednesday, November 15, 5:30 - 8:00 P.M.
in the Remington Room of the **Outlaw Inn***
1701 Highway 93 South, Kalispell

The purpose of the workshop is to receive public comments and questions regarding proposed improvements to Foy's Canyon Road. The workshop will be held in an open house format so that, you will have an opportunity to discuss concerns and issues individually with project team members. No formal presentations will be given, you are welcome to attend anytime between 5:30 and 8:00 P.M.

A second workshop is planned for early 1996 to discuss alternatives and initial results of the environmental analysis and to receive public coment on the alternatives. A public hearing is planned for spring 1996 to receive public comment on the NEPA document and the preferred alternative.

◆ ◆ ◆

More Information?

For more information or to be placed on the mailing list, contact:

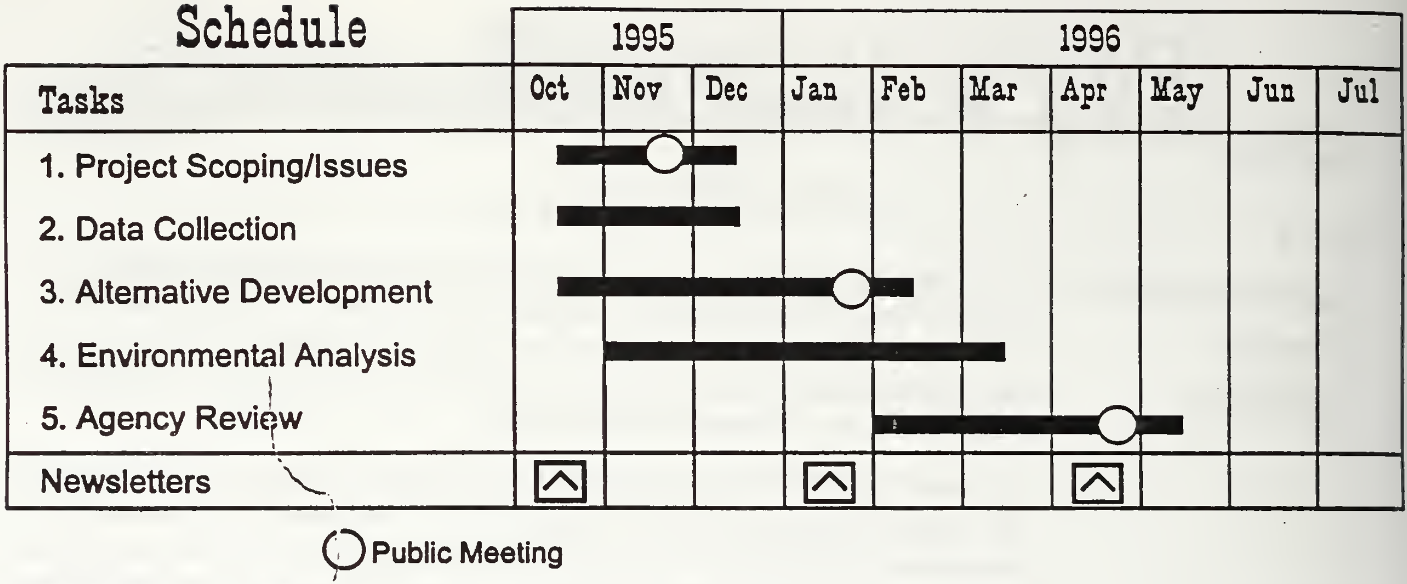
Jeanette Lostracco
Carter & Burgess
125 West Spruce
Missoula, MT 59802
721-1471 or (303) 820-4808

OR

Gordon Stockstad
Montana Department of Transportation
2701 Prospect Avenue
Helena, MT 59620
444-7223

** In compliance with the Americans with Disabilities Act, the Outlaw Inn is accessible to disabled persons. For more information or for those who require accommodations for disabilities, call Stephanie Jackober at 721-1471.*

Schedule



Foy's Canyon Road Environmental Process

First Public Workshop

Wednesday, November 15, 1995
5:30 - 8:00 P.M.
Outlaw Inn ◆ Remington Room
1701 Highway 93 South ◆ Kalispell

Carter & Burgess
125 West Spruce
Missoula, MT 59802

Stamp

Foy's Canyon Road

Public Workshop
November 15, 1995

SIGN-IN

◆
Mary Gutzwiller
Name (please print)
180 Foys Canyon Rd
Mailing Address
Kalispell Mt 59901
City, State, Zip
755-0311
Phone

◆
Charles Johnson
Name (please print)
P.O. Box 201
Mailing Address
Kila mt 59920
City, State, Zip
755-3311
Phone

◆
ROY R. HARDING
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KALISPELL MONTANA
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752-2444
Phone

◆
DONNA L. HARDING
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280 PATRICK CREEK ROAD
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City, State, Zip
752-2444
Phone

◆
PER STORLI
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City, State, Zip
752-2440
Phone

◆
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Mailing Address
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City, State, Zip
59919-0422
Phone

◆
Orrin Webber
Name (please print)
460 Orchard Ridge
Mailing Address
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755-1199
Phone

◆
ARLAN H KOHL
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◆
Michael Collins
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Mailing Address
Whitefish Mt
City, State, Zip
862-1930
Phone

◆
Orville & Esther Rogers 752-2616
Name (please print)
310 Orchard Ridge Rd Kalispell MT.
Mailing Address

City, State, Zip

Phone

Foy's Canyon Road

Public Workshop
November 15, 1995

SIGN-IN

◆ Winnifred STORLI
Name (please print)

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406 755 4311
Phone

Kalispell MT 59901
◆ Name (please print)
Wes Higgins
Mailing Address
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City, State, Zip
406-752-1486
Phone
Kalispell, mt. 59901

◆ Name (please print)
Bill + Sheli Shown
Mailing Address
689 Foys Canyon Rd
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Kalispell MT 59901
755-8616
Phone

Rick Hull - Daily Inter Lake
◆ Name (please print)
P.O. Box 7610
Mailing Address
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Phone

John Parsons, FRDO
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723-5th Avenue East, RM 414
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JOHN & PENNY ARMSTRONG
◆ Name (please print)
424 ORCHARD RIDGE RD.
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Will BEYER
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500 Fir TERRACE
Mailing Address
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Bob Norwood
758 5800
◆ Name (please print)
221 Cemetery Road
Mailing Address
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City, State, Zip
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DAVAR M. GARDNER
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752-7682
Phone

Gary W Nystul
◆ Name (please print)
PoBox 366
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City, State, Zip
257-7797
Phone

Foy's Canyon Road

Public Workshop
November 15, 1995

SIGN-IN

Marsha Shepard
◆ Name (please print)
919-6th Ave. East
Mailing Address
Kalispell, Mt 59901 755-9665
City, State, Zip Phone

~~Bruce Measarr~~
◆ Name (please print)
Bruce Measare
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P.O. Box 918 7520373
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◆ Name (please print)
Anthony A. Buechel
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Kal. Mt 59903-0806

◆ Name (please print)
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KALISPELL

◆ Name (please print)
ROMILDA SHAWBACK
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Kathy Williams
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Terry & Sue Johnson
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Columbia Falls, Mt 892-5067
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DALLAS HERRON
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MINUTES
FOY'S CANYON ROAD
SECOND PUBLIC WORKSHOP

Wednesday, February 7, 1996
5:30 - 8:00 p.m.
Outlaw Inn, Remington Room
1701 Highway 93 South
Kalispell, MT 59901

The Second Public Workshop for Foy's Canyon Road was held in Kalispell, February 7, 1996, at the Outlaw Inn, Remington Room. Forty (40) people attended the Workshop (sign in sheets attached). The workshop was identical in format to the First Public Workshop - open-meeting style, no formal presentation was given. Project information was available to the public on the sign in table (listed below). Comments were received from the public on 5 x 8 cards which were immediately displayed in the comments section wall area for the public to view and/or comment on. All officials responsible for the project were available throughout the evening to answer questions, receive comments, and talk with the public about any concerns they may have regarding the project:

Project officials present:
- Jeanette Lostracco, Carter & Burgess (Denver)
- Mike Worrall, Carter & Burgess (Missoula)
- Kathy Harris, Carter & Burgess (Helena)
- Jeremy Keene, Carter & Burgess (Missoula)
- Dave Dreher, Montana Department of Transportation (Missoula)
- Gordon Stockstad, Montana Department of Transportation (Helena)
- Bill Squires, Montana Department of Transportation (Helena)
- Dale Paulson, FHWA
- Julia Pruett, Carpenter/Dunlap
- Larry Brazda, Montana Department of Transportation (Kalispell)
- Mark Traxler, Montana Department of Transportation, Env. Services
- Jeff Ryan, Montana Dept. of Environmental Quality, Water Quality Section
- Annell Fillinger, AM Tech Services

The following Information was available to the public on the sign-in table:

- Agenda for the evening (attached) which explained in detail the format for the meeting as well as information on how to provide input at the meeting;

The 1st & 2nd Foy's Canyon Road Newsletters (attached)

Comment Sheet (attached)

The seven wall displays were as follows:

Section 1: Alternatives

(5 photo's of the current roadway with alternatives marked + written explanation detailing modification of roadway accompanied each photo)

No Build Alternative (advanced)
Pave existing surface (not advanced)
Non-Secondary Roadway w/30 mph design (not advanced)

Photo 1: Secondary Roadway with Design Exception
Secondary Roadway with design Exceptions A&B (not advanced)
Photo 2: Secondary Roadway with Modification D
Modification D - Milepost 7.0 - 7.5 (not advanced)
Photo 3: Secondary Roadway with Modification C
Modification C - Milepost 6.7 - 7.0 (advanced)
Photo 4: Secondary Roadway with Modification B
Modification B Milepost 6.0 - 7.0 (not advanced)
Photo 5: Secondary Roadway with Modification A
Modification A - Milepost 3.8 - 4.5 (advanced)

Section 2: 5 Project Maps
Map #1- Proposed Alternatives
Map #2 - Historical Daily Traffic Counts
Map #3 - High Accident Locations
Map #4 - 1985 - 94 Accident Concentrations
Map #5 - Traffic data

Row of Visual Cards accompanying maps

Row 1:
Project Discussion
Lone Pine - State Game preserve is privately owned therefore not 4(f)
FRDO - Projects - 6-1/2%/yr growth rate to the year 2015
Cultural Inventory taken 10/96 - no eligible sites
Road improvements likely to accelerate area residential developments

Row 2:
Purpose & Need
Safety Problem

Accident Rate Info (graph)
Accident Severity Info (graph)
Accident Locations (map)

Row 4:
System Linkage
Improvements will connect two roads which have been improved
Map of improved section & unimproved section
Problems with current situation
- Driver expectancy problems
- Higher accidents
- Greater potential for driver error

Row 5:
Traffic volumes
Historical traffic growth (graph)
Milepost locations
Projected traffic (graph)

Row 6:
Accident Info: adjacent roads (graph)
Accident type Info (graph)

Row 7:
Roadway Deficiencies
Narrow Lanes & No. Shoulders
- No passing opportunities
- Few pullouts for vehicle breakdown
- No space for bicycles or pedestrians

Steep, winding conditions with poor sign distances
Inadequate open areas to serve as a recovery zone for errant vehicles
Maintenance problems
- insufficient shoulder widths for maintenance, vehicles & operations
- shading and icing due to proximity of trees
- drainage problems

Section 3: Environmental Issues
2 Photos - Flood plains & Existing Wetlands

Section 4:
Photo - Existing Visual Character
Photo - MDT Design
3 Secondary roadway design
- Secondary roadway with a 40 mph design standard that meets Flathead County

Section 3: Environmental Issues

2 Photos - Flood plains & Existing Wetlands

Section 4:

Photo - Existing Visual Character

Photo - MDT Design

3 Secondary roadway design

- Secondary roadway with a 40 mph design standard that meets Flathead County and state design requirements
- Results in improved traffic surface, provision of sight distances, and vertical grades all less than 7%
- Widened and flattened side slopes provide an emergency recovery area for out-of-control vehicles
- Results in impacts of wetlands

Section 5: Display of visual cards

Row 1- Project Process

Define purpose and needs
Define alternatives
Assess impacts of alternatives
Prepare NEPA Documents
Obtain agency and public comments
Select preferred alternatives

Row 2- Public involvement

Public workshops - Nov 1995 & Jan/Feb. 1996
Newsletter - sent to people on mailing list
Public hearing - Spring 1996
Telephone calls/letters - Jeanette Lostracco & Gordon Stockstad

Row 3 - Project Schedule

Data collect
Define alternative: Oct - Jan
Impact Assessment: Dec - Feb
Prepare NEPA Document
Public Hearing: Feb - April
Prepare final decision document: May - June

Row 4 - Determine Needs

Reduce accidents (head on/sideswipe/truck)
Accidents per million vehicle miles (graph)
Reduce maintenance Costs ($8500/hr due to gravel surface)

Accommodate anticipated growth
Graph - average daily traffic
Increased recreation-access to Patrick Creek area
Upgrade connection with Airport Road and Foy's Lake
Reduce road dust
Improve inadequate sight distance
Improve open area for recovery zone

Row 5 - Known environmental issues
Change in visual character
Potential increase in traffic speeds
Potential wetlands impact
Noise impacts - individual residences and church
Parks - Herron Park, Foys Center
Potential for right-of-way needs
Others?

Row 6 - Contents of NEPA Doc.
Define purpose and need
Describe alternatives - no build/build/other
Land use impacts (existing land use change/induce development)
Farmland impacts (displacement of prime farmland)
Local impacts (school districts, recreation areas, churches, police & fire protection)
Relocation impacts (right-of-way/40 of 46 parcels have been purchased
Economic impacts (effects on development)

Row 7 - Transportation impacts
Pedestrian & bicycle
Traffic increase
Air quality impacts
Noise impacts (predicted noise change from existing)
Water resources impacts (fill in drainages/water quality impacts)
Wetlands impacts (fill in wetlands/avoid alts.)
Wildlife & fisheries impacts (hawks, woodpecker, elk, white-tailed deer, red tree squirrel, stellars jay, snow shoe hare))
Floodplain impacts

Row 8 - Endangered species
Closest known bald eagle nest 3 miles
Historic and archeological (a survey was conducted - no historical/archeological sites identified)

Section 4f (impacts to Parks or historic properties)
Hazardous materials (such as leaking underground storage tanks, pumps, etc.)
Visual impacts (changes to visual character)
Construction impact

Section 6: Project Schedule

Blow up of Newsletter Project Schedule Graph
Card Display of Project Schedule:
Data Collection
Define alternatives (Oct - Jan)
Impact Assessment (Dec - Feb)
Prepare NEPA Document
Public Hearing (Feb - April)
Prepare Final Decision Document (May - June)

Section 7: Comments

Air Quality/Dust

- Air Pollution - road is worse than potential manufacturing
- 404B1 appl'n needs to be attached to EA (overlay road) show graphically

Dust

- Costs a lot to reduce dust and maintain gravel. Oiling road creates grime on cars.
- Dust abatement needs to be added to the purpose and need.
- Dust is a big problem
- Dust is a problem
- Dust is too extreme to jog or walk near the road. Dust is like fog in winter.

Economic/Funding:

- If federal funds can be used to build a road that impacts resources and communities less - why can't this be built?
- Need to get right-of-way purchased now before land prices go up - then wait for funding to build road.
- The property taxes contributed by Orchard Ridge alone should give them some credible consideration
- No cost of money spent to 1996
- Total Cost ?

Construction:

- Needs improvements - but not too wide
- Pave only to Orchard Ridge and to Shelter Valley

- Presence of springs in roadway will cause more expense in construction.

Traffic/Speed:
- Kids will use improved road to race
- Concern - higher speed will result in severe accidents
- Improvements - Do not improve roadway speed, improve corners only.
- Steep track - Kids are racing (potentially between two RR crossings)
- Concerned with increased speeds. Will attract bikes, pedestrians which will conflict with higher speeds.
- Will be nice for bike/joggers etc. but are concerned about speeds.
- High school kids have keggers up in this area and drive fast and crazy.
- Concerned about speed.
- Kids may come up to race
- Concerned that kids will race around loop.
- People will drive faster than the posted speed limit (40 mph)
- The people who are concerned with speeding increases with improvements think the project would serve as a bypass, Kalispell bypass will serve this need better.

Traffic/Volume:
- Improved Foy's Canyon Road would create loop route for hikers/bikers. We support this.
- Bikers will be attracted to areas
- Not many people use this road. People moving here from out of town expect roads to be built to the same standards as the place they left.

Traffic/Safety:
- Potentially more pedestrian and bike accidents if paved
- Speed limit signs are not out there (they have been requested)
- Busses take up 3/4 of existing road.
- More pedestrians and bikes will use road (if improved)
- Higher deaths on Airport Road and Foy's lake due to improved roads.
- Not bigger road, just safer.
- Individual accident experience - I avoid canyon in the winter.
- Live on Patrick Creek Road - need improvements to create an improved safety condition for bikers, pedestrians, and horses.
- There has not been a fatal accident on this road.
- Historically, accidents have been minor on the Foy's Canyon section. Major accidents occur on paved sections.
- Have requested account data - has not been received - also emergency vehicle access.

Environmental (Wildlife, Wetlands & Aesthetics):

- Stop sign needed to avoid wetland (on Foy's Canyon @ Patrick Creek).
- Design into floodplain should require design modification.
- Flood plains - not correct @ Shelter Valley (Shelter View).
- Devar Gardner may have an enhancement or give us credit for wetland he is building behind his house. Visit with Devar on potential mitigation site.
- Save the tree (near Gardner's house) on roadway.
- Just south of wetland by Herron Park, perhaps shift west to avoid houses - will work well with Alternative A (Map drawn).
- Avoid impacting rock outcroppings in narrow section of canyon.
- Patrick Creek meadow - maintain wetland and minimize impacts.
- What is alternative to taking most possible wetlands? What alternatives have been analyzed to avoid wetlands and why have they been dropped?
- Road should be outside floodplain (prefer maintain existing alignment).
- 404 analysis wetland - needed at Patrick Creek and Birch Creek.
- What is state-of-art for floodplain avoidance?
- Check with Devar Gardner - Gardner Auction 752-7682
- No design to avoid floodplain shown.
- No build would avoid most wetland. Keep extreme curve and steep slope and add stop sign at Patrick Creek Road.

Social Concerns/Area growth:

- Area attracts teenagers who hangout and drink.
- Road should be outside floodplain (prefer maintaining the existing alignment).
- Improving road will encourage development and county will not be able to provide services, schools, fire, police, etc. County needs funds to provide this.
- Roadway needs to be improved but to a reduced standard. Improved road will encourage speeding, increased development and traffic and property values.
- Improve the areas that have the potential for high growth. Leave the canyon section unimproved.

Classification as secondary highway

- Should have stated "classification" of roadway in 2nd newsletter.
- Why traffic volumes qualify secondary classification?
- Favor the road, but question the secondary road standard necessity.
- Why is this road on secondary system? Federal/state does it meet criteria for secondary?
- Why was this road put on secondary system?
- Should not be on federal or state secondary system.
- We should do a study - to see it meets secondary criteria (as part of this process).

- Does not meet secondary road criteria.
- Design:
- Suggest a retaining wall opposite Storli's barn to be able to pull road.
- Through the meadow @ Orchard Ridge avoid ugly cut slopes into hillside.
- Needs improvements - but not too wide.
- Need X-draw just east of Orchard Ridge.
- Perhaps move C a little further north to stay out of the creek. (Map drawn)
- Build as originally engineered.
- Suggest trying to keep close to existing alignment and pavement. But corners need to be straightened out.
- Want original MDT design that money was already spent on.
- Still think we should pave the road the way it is.
- Provide connecting road (Foy's Canyon) should = Foy's Lake & Airport).
- New modifications are not an improvement on the original design. Original design is a good design.
- Stay closer to existing roadway to avoid new right-of-way purchases. Sweeping curves should be reduced to avoid new right-of-way needs.
- Reynolds -- concerned about removing trees, why won't the road move to the west to avoid property?

Alternatives

- Alternative 3A has the least impacts.
- Prefer modification D, less impacts to new right-of-way.
- Modification D would destroy value of property - topography is bad for this alternative.
- No alternative brought forward to mitigate Storli farm impacts (it's been eliminated).
- 2nd newsletter should have stated what alternatives were for what mitigation purposes - newsletter does not reflect adequate.
- Like Alternative A.
- Secondary roadway design would be preferable to 3D.
- Alternative A will help make it possible to shift west.
- Just south of wetland by Herron, perhaps shift west to avoid house. Will work well with Alternative A.
- Alternative A - support. It will miss wetland.
- Alternative A - oppose keep on existing alignment.
- Alternative A makes sense if right-of-way costs are not excessive.
- Supports Modification C - less impact to houses along existing road.
- People in Herron Trust don't want Alt A (preliminary feedback).
- Does not like Act. C (D. Gardner) - Does like Alt. A.

- Alternative 3A goes though the nature conservancy? There also maybe a new house on this alignment.
- Alternative C - support it. It would minimize wetland impact.
- Like Alternative A.
- Like Alternative C.
- Alternative A is the best one since it avoids wide cuts through the hill.
- Herron Trust has concerns with Alternative A now. Loss of farm ground is a problem. Will be more visual impact to pasture.
- Alternative A - good - avoids houses.
- Do It! (The project) - Alt. A & C will save money.
- Both modifications A & C are a vast improvement and should be advanced - It will improve safety including school bus safety.

Misc.

- Disagree with dropping of T-intersection.
- Why should money be spent for other than paving the existing road?
- Don't like- pave existing road as it's a ditch.
- What is criteria for putting this road on priority list to begin with?
- Consistent terminology (traffic)
- Like the project all in all.
- Horses are a concern - they typically use ditches.
- Road needs to be paved.
- Potholes are a problem.
- 1st workshop was held during hunting season.
- Angry at County Commissioners for wanting to eliminate this project. This is an important project.
- Leave as is. Minimize improvements. Just pave existing road.
- Pave road in its present location.
- Pave road definitely.
- County should have paved Foy's Canyon themselves and put another more important road on the priority list.
- Would like to see it improved to standards at both ends. It is a hazard as is.
- Would like to sees what is being proposed. Paved to new standards.
- Request farmland impact and mitigation analysis - focus on Storli farm.
- Just do it!
- Other questions have not gotten response...(written to MDT)
- Don't let vocal minority stop project.
- Quit messing around. Do it!
- Lots of survey done - why no action?
- Winnifred Storli has not received a response to her last letter.

- JoAnne & Mark Miller, P.O. Box 1724, Kalispell, MT 59903-1724. They would like aerial photograph of Foy's Canyon Roadway (same as were presented at Public Workshop) - they live at 3120 Airport Road
- Through meadow - splits farm land into unusable pieces.
- Suggest that road improved to Orchard Ridge and to Patrick Creek but leave Canyon alone.
- Proposal not advanced - I was interested particularly in the down sealed option.
- 404 permit application should be prepared concurrently with the NEPA document
- No drainage on existing road.
- Which parcels remain to be purchased?
- What happens to abandoned right-of-way.
- More information should be in the newsletter.
- Map on newsletter is misleading.
- Aerials are misleading - show width of slopes.
- Build the road.
- Worst part of road - near church - blind curves (avoid route).

pubmtg2.min

AGENDA

Foy's Canyon Road Public Workshop
February 7, 1996
5:30 p.m. to 8:00 p.m.
Outlaw Inn - Kalispell

Open House Format (No Formal Presentation)

☐ Review graphics and information throughout the room

☐ Station Information:

- Introduction to Study
- Purpose and Need
- Comments from November 15, Public Workshop and Correspondence
- Questions Raised by the Public and Responses
- Known Environmental Issues
- Traffic Data
- Future Land Use Plans
- Roadway Improvement Alternatives
- Project Schedule
- Comments

How to Provide Input at the Meeting

☐ Project team members have name tags - give them your comments or ask them questions.

☐ Comment sheets (at the front table) - fill out and put in the comment box.

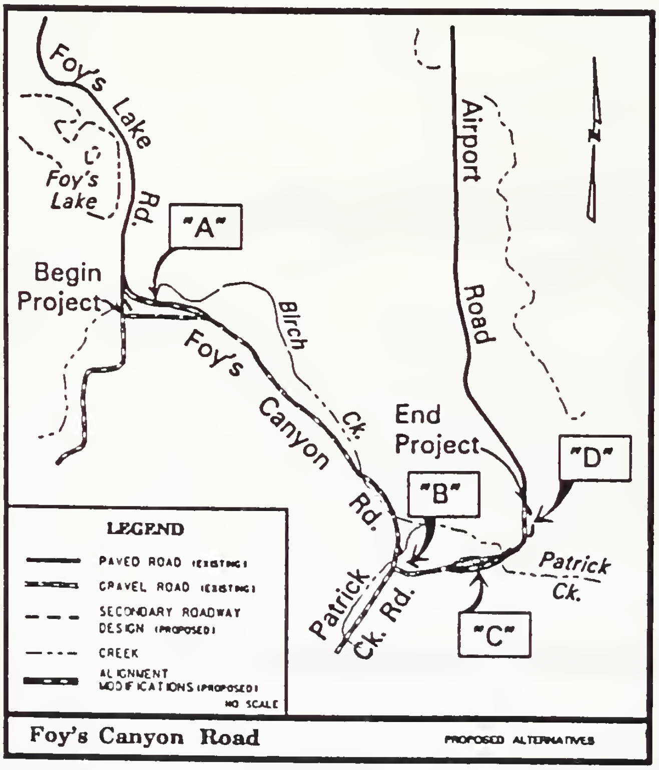
☐ Comment sheets - take home to fill out and mail in.

Foy's Canyon Road

Public Workshop #2
FEBRUARY 7, 1996
HANDOUT

A number of alternatives for improving Foy's Canyon Road were initially developed and considered during the design process at the first public workshop held on November 15, 1995.

The alternatives recommended to be advanced for further analysis include the **No-Build Alternative**, and **Secondary Roadway Design** with modifications **A** and **C**. The "build" alternatives are displayed on the map located below. Descriptions including advantages and disadvantages of each alternative, the reasons for either advancing or not advancing the alternative, are on the bottom of this page and the reverse side of this handout.



Foy's Canyon Road Proposed Alternatives

ALTERNATIVES 1-5

1. NO-BUILD (Advanced)

- No changes would be made to reduce the potential for accidents or to increase off-road features.
- Roadway dust would not be reduced, and maintenance needs would remain the same.

2. PAVE EXISTING SURFACE (Not Advanced)

- Provides an asphalt surface for the existing roadway with no changes in ROW, curves, and off-road features.
- No changes would be made to reduce the potential for accidents or to increase off-road safety features.
- Possible underground springs in canyon roadway section would significantly affect operating conditions and maintenance needs if they occur. Maintenance needs would be reduced if the springs do not appear.
- Not advanced because it would not meet purpose and need for the project.

3. PROPOSED SECONDARY ROADWAY DESIGN (Advanced)

- Secondary roadway with a 40 mph design standard that meets Flathead County and State design requirements.
- Results in improved travel surface, provision of sight distance, vertical grades all less than 7%, and reduction in accidents.
- Widened and flattened side slopes provide an emergency recovery area for out-of-control vehicles.
- Results in impacts to wetlands; results in reduction in maintenance.

3A Modification A, Milepost 3.8-4.5 (Advanced)

- Proposed alignment shifts north to traverse the open field in an easterly direction for about 1/4 mile at approximate milepost 3.5, then curves southward to rejoin the proposed alignment at approximate milepost 4.4.
- Alignment is not a high accident zone, and would be more distant from the Foy's Community Center.
- Results in potentially reduced wetland impact, reduced vertical grades and earthwork requirements.
- Results in impacts to farmlands.

3B Modification B, Milepost 6.0-7.0 (Not Advanced)

- Proposed alignment shifts north to traverse the hillside above Patrick Creek between milepost 6.25 and 6.8, and rejoins the proposed alignment between milepost 6.9 and 7.0 - near Wild Rose Trail.
- Results in potentially reduced wetlands impact.
- Traverses a slope exceeding 20% where the alignment follows the hillside.
- Results in noise, visual, and other roadway-related impacts to Wild Rose Trail residents.
- Not advanced because of impacts to residential area and steep grade of alignment.

3C Modification C, Milepost 6.7-7.0 (Advanced)

- Proposed alignment shifts easterly at the existing S-curves and rejoins the proposed alignment at approximate milepost 7.0.
- Results in potentially reduced wetlands impact.
- Although located in the high accident zone, the alignment should improve existing safety conditions.

3D Modification D, Milepost 7.0-7.5 (Not Advanced)

- Proposed alignment shifts northwesterly, further up the hillside above the existing roadway and rejoins the proposed alignment at approximate milepost 7.5 before the large stand of coniferous trees.
- Results in severe physical impacts to residential properties, including potential need to impact a structure.
- Not advanced because of severe impacts to residents.

4. PROPOSED SECONDARY ROADWAY WITH DESIGN EXCEPTIONS A and B (Not Advanced)

- Neither a proposed horizontal curve design exception at the project beginning (A) between the north-south Foy's Lake Road and the east-west Foy's Canyon Road, nor a modified traffic control at the Patrick Creek Road intersection (B) would provide a consistent roadway for the traveling public, and neither design exception would meet driver expectancy, thus increasing the potential for accidents in this area.
- Engineering recommendation would not support design exceptions A or B because their need is not justified.
- Not advanced because of safety problems - does not meet purpose and need.

5. NON-SECONDARY ROAD - 30 MPH DESIGN (Not Advanced)

- This modification to the existing roadway would reduce roadway dust and maintenance needs.
- 30 mph design may reduce the potential for accidents.
- 30 mph design is not compatible with the roads on either end (Foy's Lake and Airport Roads).
- Not advanced because it does not meet purpose and need, and is not eligible for federal or state funding.

Foy's Canyon Road

COMMENT SHEET

I have the following comments or questions about the Foy's Canyon Road project:

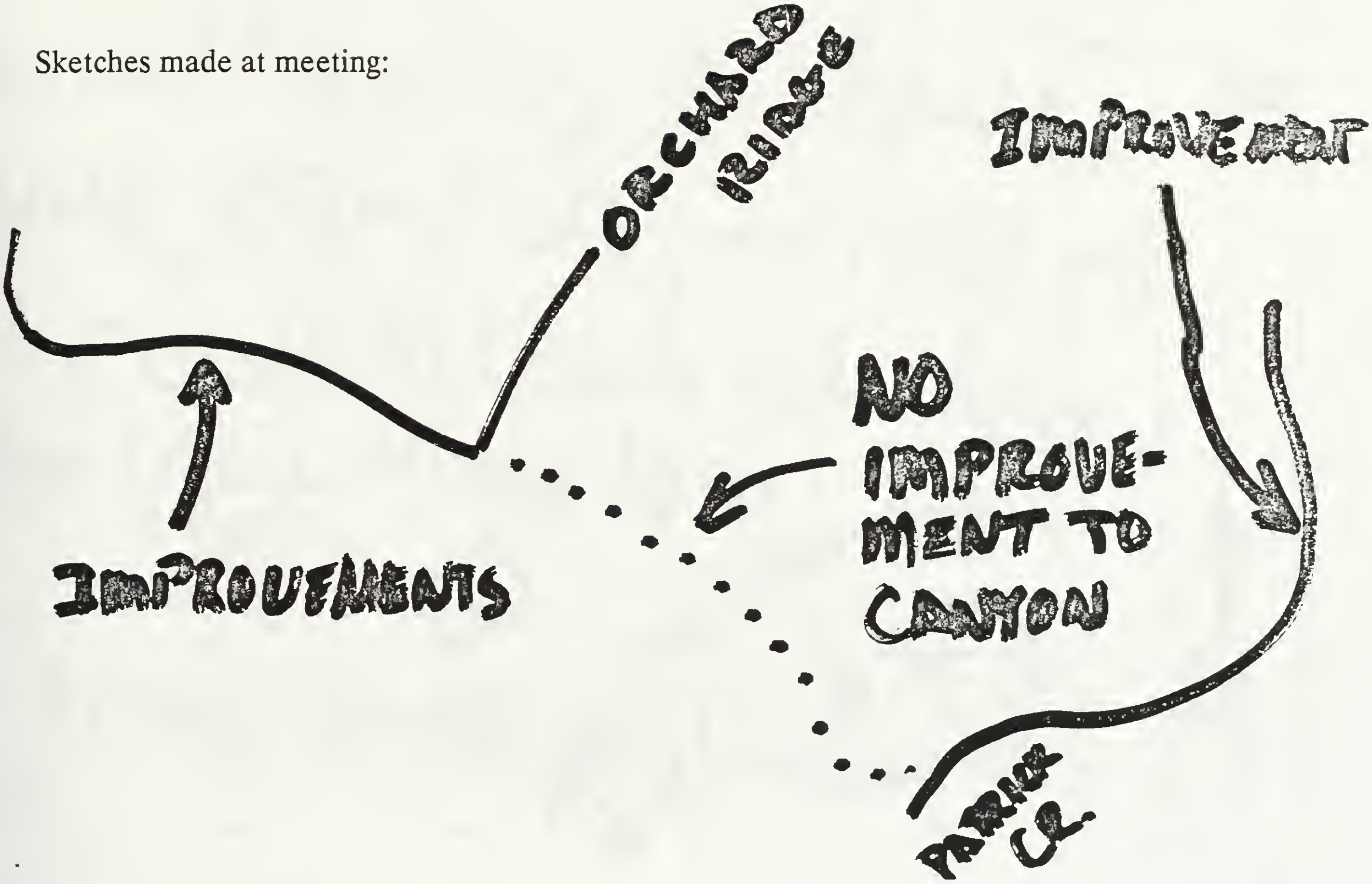
Name

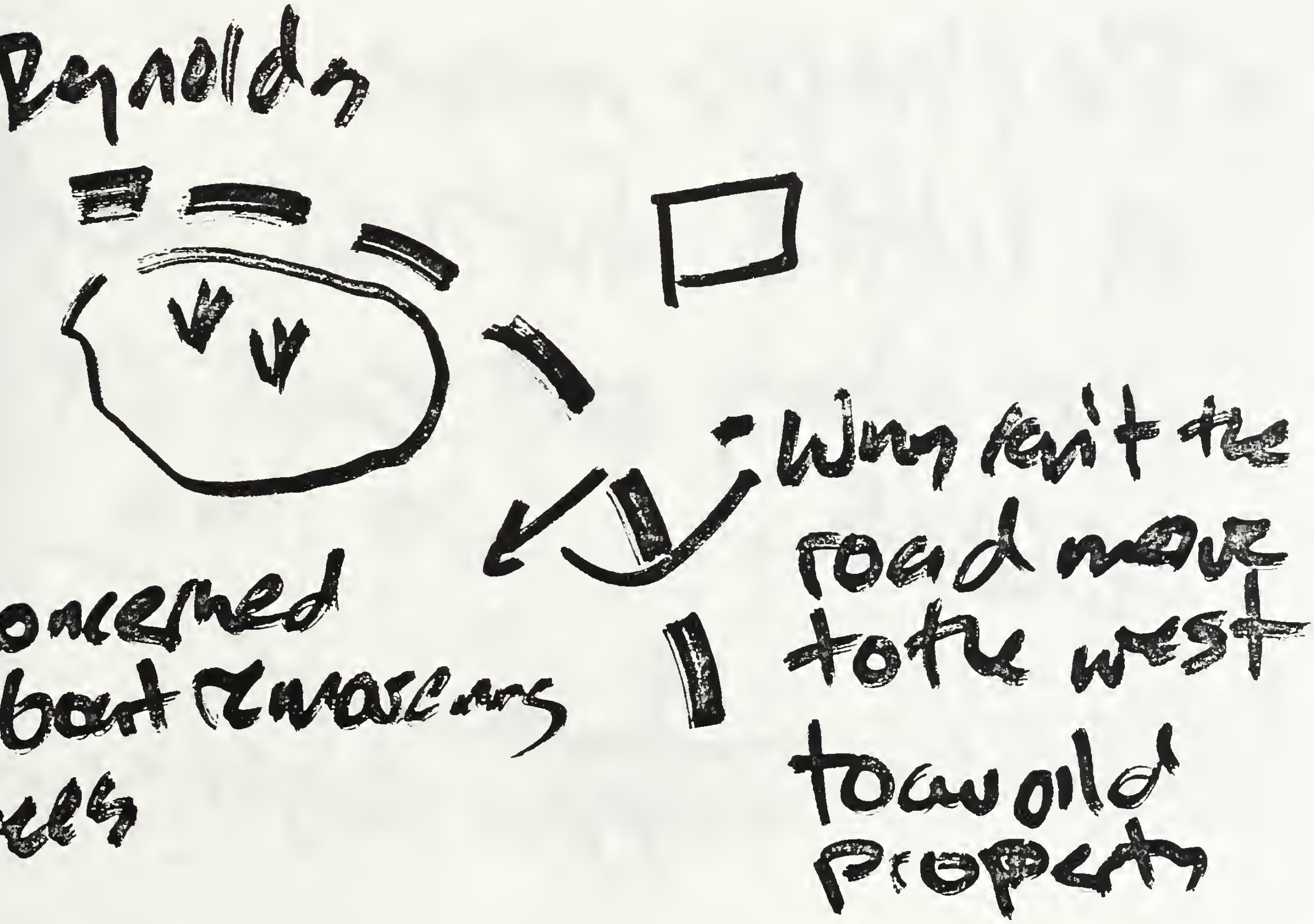
Address

Phone

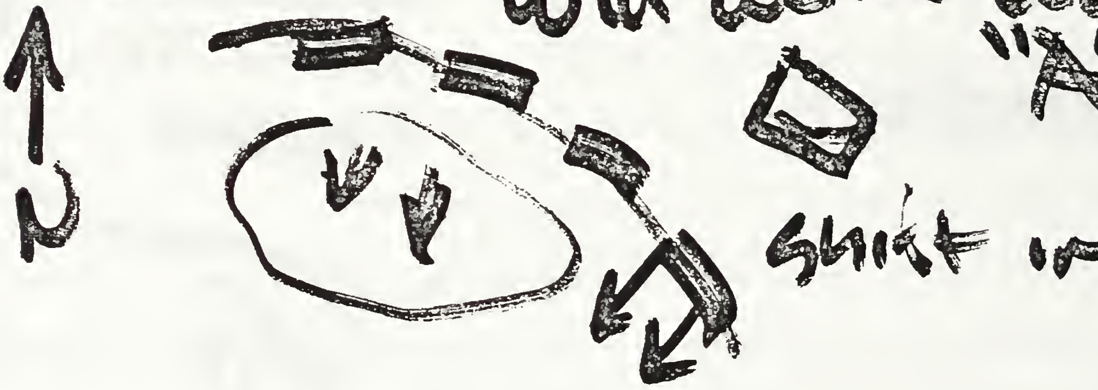
(above information is optional)

Sketches made at meeting:




Reynolds
Why isn't the road move to the west to avoid property
Concerned about [illegible] trees

- Just S. of wetland by Herran, perhaps shift west to avoid hous will work well w/ "A".



- Perhaps move C a little further north to stay ~~out~~ out of the creek.

suggest slight shift.

Foy's Canyon Road

Public Workshop
February 7, 1996

SIGN-IN

◆

Ann C. SHELT
Name (please print)
265 Foys Canyon Rd
Mailing Address
Kalispell, mt 59901-7572
City, State, Zip
752-0787
Phone

◆

Paul C. SHELT
Name (please print)
265 foys Canyon Rd
Mailing Address
Kalispell, mt. 59901-7572
City, State, Zip
752-0787
Phone

◆

Henry Broers
Name (please print)
Box 406
Mailing Address
Hungry Horse Mt 59919
City, State, Zip
387-5531
Phone

◆

Mike Koness
Name (please print)
207 Shelter Valley Dr.
Mailing Address
Kalispell MT 59901
City, State, Zip
257-2326
Phone

◆

JEANNE R. FINN
Name (please print)
409 ORCHARD Ridge RD.
Mailing Address
KALISPELL, MT 59901
City, State, Zip
756-8588
Phone

◆

Rich Reynolds
Name (please print)
PO Box 8302
Mailing Address
KALISPELL MT 59904
City, State, Zip
257-5133
Phone

◆

Sharlon L. Willows, C.L.A.
Name (please print)
Box 422
Mailing Address
Hungry Horse, MT
City, State, Zip
387-5872
Phone

◆

Alan Olson (put on mailing list)
Name (please print)
109 Shelter View
Mailing Address
Kalispell
City, State, Zip
752-4310
Phone

◆

Russ Hadley (put on
Name (please print)
193 Shelter Valley Dr.
Mailing Address
Kalispell MT. 59901
City, State, Zip
752-3661
Phone

◆

Name (please print)
Mailing Address
City, State, Zip
Phone

Foy's Canyon Road

Public Workshop
February 7, 1996

SIGN-IN

◆

TOM BANNER
Name (please print)
325 ORCHARD RIDGE RD.
Mailing Address
City, State, Zip
755-4462
Phone

◆

JOANI BANNER
Name (please print)
325 ORCHARD RIDGE
Mailing Address
KALISPELL
City, State, Zip
755-4462
Phone

◆

John ARMSTRONG
Name (please print)
424 ORCHARD RIDGE RD.
Mailing Address
KALISPELL MT.
City, State, Zip
752-3075
Phone

◆

Bruce A. Measure
Name (please print)
P.O. BOX 916
Mailing Address
Kalispell, Mt
City, State, Zip
752-6378
Phone

◆

LEONARD OFTEDAHL
Name (please print)
P.O. Box 7162
Mailing Address
Kalispell, Mont. 59904
City, State, Zip
(406) 752-5857
Phone

◆

Glen L. Fulton
Name (please print)
345 Orchard Ridge Road
Mailing Address
Kalispell, MT, 59901
City, State, Zip
7524079
Phone

◆

Ron Kohut
Name (please print)
BOX 1429
Mailing Address
Columbia Falls, 59912
City, State, Zip
892-3252
Phone

◆

DALLAS HERRON
Name (please print)
(ON LIST)
Mailing Address
City, State, Zip
Phone

◆

Name (please print)
TOM JENTZ
Mailing Address
FRDO 723-5TH AVE E.
City, State, Zip KALISPELL
758-5980
Phone

◆

Anthony A. Buechel
Name (please print)
Box 806 (650 Foy Cyn Rd)
Mailing Address
Kal MT 59903-0806
City, State, Zip
752-5835
Phone

Foy's Canyon Road

Public Workshop
February 7, 1996

SIGN-IN

◆ Mark and JoAnne Miller
Name (please print)
PO Box 1724
Mailing Address
Kalispell, MT 59903-1724
City, State, Zip
755-2771
Phone

◆ Tom Esch
Name (please print)
P.O. Box 2943
Mailing Address
Kalispell MT 59903
City, State, Zip
752-5187
Phone

◆ Pam Ellason
Name (please print)
P.O. Box B34
Mailing Address
Kalispell MT
City, State, Zip
752-0092(w)
Phone

◆ [illegible] McCallum 755-7376
Name (please print)
722 7th Ave. E.
Mailing Address
Kalispell, MT
City, State, Zip
Phone

◆ Dr John a Ann Lipinski
Name (please print)
1695 whalebone Dr.
Mailing Address
Kalispell MT. 59901
City, State, Zip
(Work) 756
7341
Phone
7646

◆ Winnifred Storli
Name (please print)
P.O. Box 249 Kalispell MT 59901
Mailing Address
City, State, Zip
Phone

◆ PER STORLI
Name (please print)
Box 249, KALISPELL
Mailing Address
MT. 59903
City, State, Zip
Phone

◆ Dale Sommerfield
Name (please print)
627 Foys Canyon Rd.
Mailing Address
Kalispell MT
City, State, Zip
752 5377
Phone

◆ Vera Stewart
Name (please print)
330 Orchard Ridge Rd
Mailing Address
Kal. Mt. 59901
City, State, Zip
257-0156
Phone

◆ BRUCE I. STEWART
Name (please print)
330 Orchard Ridge
Mailing Address
KALispell MONT. 59901
City, State, Zip
257-0156
Phone

Foy's Canyon Road

Public Workshop
February 7, 1996

SIGN-IN

People attended
4037

◆ Davan M Gardner (use both addresses)
Name (please print)
P.O. 943/ 3095 Airport Rd.
Mailing Address
Kalispell MT
City, State, Zip
752-7682
Phone

◆ Sarah M. Gardner
Name (please print)
3165 Airport Rd
Mailing Address
Kal. MT 59901
City, State, Zip
752-6377
Phone

◆ Vicky Gardner
Name (please print)
3095 Airport Rd.
Mailing Address
Kalispell, mt
City, State, Zip
752-7703
Phone

◆ Rick Hull
Name (please print)
Daily Inter Lake
Mailing Address
Kalispell
City, State, Zip
Phone

◆ Jackie + Dick Chowning
Name (please print)
3080 Airport Rd
Mailing Address
Kalispell
City, State, Zip
7567988
Phone

◆ Marsha Shepard
Name (please print)
919-6th Ave. East
Mailing Address
Kalispell, MT 59901
City, State, Zip
755-9465
Phone

◆ Name (please print)
JOHN HOLETZ
Mailing Address
100 BRANDY LN
City, State, Zip
755-8911
Phone

◆ Pat Holetz
Name (please print)
100 Brandy Ln
Mailing Address
Kalispell mt. 59901
City, State, Zip
755-8911
Phone

◆ Name (please print)
Mailing Address
City, State, Zip
Phone

◆ Name (please print)
Mailing Address
City, State, Zip
Phone

Foy's Canyon Road

Newsletter #2

January 1996

ENVIRONMENTAL PROCESS CONTINUES

The first public workshop for this project was held on November 15, 1995. Several comments were received at this workshop, including:

- ☐ Minimize impacts to wetlands, streams, floodplains.
- ☐ Minimize impacts to property owners.
- ☐ The road is currently dangerous--make it safer.
- ☐ Proceed with proposed improvements.
- ☐ The road does not need to be improved.
- ☐ Dust is a problem.

Several alternatives were developed and all improvement alternatives were evaluated, taking into account public comments received and other factors. As a result of this evaluation, the following alternatives are being advanced for further consideration in the Environmental Assessment (also see map on reverse side):

- ☐ No-Build
- ☐ Secondary Roadway
- ☐ Secondary Roadway with Modification A at Milepost 3.8-4.5
- ☐ Secondary Roadway with Modification C at Milepost 6.7-7

STAY INVOLVED

The second of three public workshops for the Foy's Canyon Road project is scheduled for:

Wednesday, February 7, 5:30-8:00 p.m.
In the Remington Room of the Outlaw Inn *
1701 Highway 93 South, Kalispell

The purpose of this second workshop is to discuss the improvement alternatives being advanced, initial results of the environmental analysis, and to receive public comments on the alternatives. A public hearing is planned for Spring 1996 to receive public comment on the NEPA document and the preferred alternative.

For more information or to be placed on the mailing list, contact:

Jeanette Lostracco
Carter & Burgess
113 W. Front Street, Suite 105
Missoula, Montana 59802
721-1471 or 303-820-4808
or
Gordon Stockstad
Montana Department of Transportation
2701 Prospect Avenue
Helena, Montana 59620
444-7223

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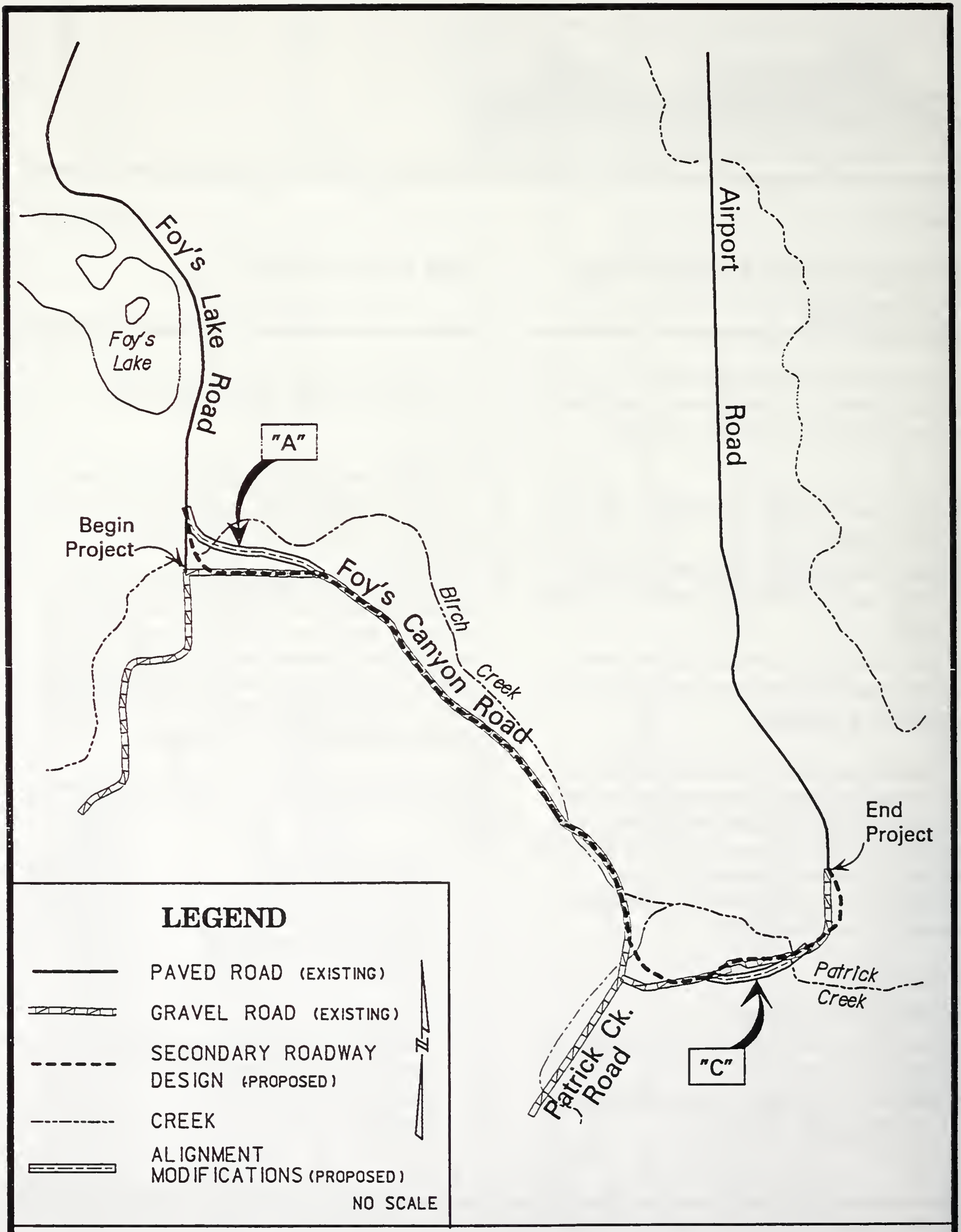
* In compliance with the Americans with Disabilities Act, The Outlaw Inn is accessible to disabled persons. For more information or for those who require accommodations for disabilities, call Stefanie Jakober at 721-1471.



Foy's Canyon Road PROPOSED ALTERNATIVES

This article was reprinted from the Montana Department of Transportation Planning Newsline - January 1996 to provide information regarding secondary roads.

What Are Secondary Roads?

The "Secondary Highway System" includes those highways that have been functionally classified by the department as either minor arterial or major collector and have been selected by the Montana Transportation Commission, in co-operation with the Board of County Commissioners, to be placed on the Secondary Highway System.

Who Is The Program Managed By?

Secondary Roads Engineer - Gary Larson (406-444-6110)

Where Does The Money Come From?

Federal Aid is divided into two categories: the National Highway System (NHS) and the Surface Transportation Program (STP). Funding for the Secondary Road Program is suballocated from STP funds. Funding is 86.58% federal with a 13.42% state match. 1995 Federal Fiscal Year funding was approximately $15 million statewide.

How Is The Money Distributed?

According to Montana law, funds are apportioned to the 56 counties based on the following 4 factors: (Each factor is a ratio of that county to the total).

- County land area
- Rural population
- Rural road mileage
- The value of all rural lands

What Highways Are Eligible?

Highways must be classified as "Secondary Highway" (See "What are Secondary Roads?")

What Improvements Are Eligible?

Any improvement to the roadway which improves the structure of the road is eligible for Secondary funding. Maintenance activity is not eligible. Eligible improvements include reconstruction, overlays, bridge rehabilitation or reconstruction, pipe replacement, improved railroad crossing surfaces, and epoxy striping.

Who Sets The Project Priorities?

County commissioners establish priorities based on available funds. All priorities are documented via a completed SR-1 form which details route, milepost, scope of work, and county concurrence.

What Is The Review & Approval Process?

Each project is reviewed by MDT's District Engineer as well as the Secondary Roads Engineer. All projects are then included in the "Statewide Transportation Improvement Program" and subjected to public review. As custodian of Montana transportation system, the Montana Transportation Commission must ultimately approve all proposed improvements to the Secondary Highway System. Final approval occurs in July or August of each year.

What Is The Programming Process?

Following an internal review, MDT's Fiscal Programming Section submits a program request to the Federal Highway Administration. FHWA reviews and than commits federal participation.

Who Does Project Design, Development And Construction?

MDT allows each county the option of a consultant design or MDT design. MDT encourages counties to retain consultants for such projects. After the decision is made, preliminary engineering activities begin and ultimately the project is constructed.

Carter & Burgess
113 W. Front Street, Suite 105
Missoula, Montana 59802

The second of the three public workshops for the Foy's Canyon Road Project is scheduled for:

Wednesday, February 7, 5:30-8:00 p.m.
In The Remington Room of the Outlaw Inn
1701 Highway 93 South, Kalispell

Foy's Canyon Road

Newsletter #1 November 1995

♦ ♦ ♦

Environmental Process Initiated

The Flathead County Commissioners have selected and prioritized Foy's Canyon Road for secondary roadway improvements. In response to the Commissioner's prioritization, the Montana Department of Transportation has hired Carter & Burgess, Inc. to initiate the process for assessing impacts of the proposed improvements.

The National Environmental Policy Act (NEPA) process and document will examine environmental impacts of the proposed improvements. If appropriate, modifications to the design discussed with the public at various meetings over the past several years will also be examined as part of this process.

♦ ♦ ♦

Get Involved!

An important part of this study is a public involvement program to inform citizens of the environmental process, progress, and results, and to provide an opportunity for residents to express their concerns and ask questions.

This newsletter is the first for the Foy's Canyon Road project and announces the first of three public meetings. The first workshop is scheduled for:

Wednesday, November 15, 5:30 - 8:00 P.M.
in the Remington Room of the **Outlaw Inn***
1701 Highway 93 South, Kalispell

The purpose of the workshop is to receive public comments and questions regarding proposed improvements to Foy's Canyon Road. The workshop will be held in an open house format so that, you will have an opportunity to discuss concerns and issues individually with project team members. No formal presentations will be given, you are welcome to attend anytime between 5:30 and 8:00 P.M.

A second workshop is planned for early 1996 to discuss alternatives and initial results of the environmental analysis and to receive public coment on the alternatives. A public hearing is planned for spring 1996 to receive public comment on the NEPA document and the preferred alternative.

♦ ♦ ♦

More Information?

For more information or to be placed on the mailing list, contact:

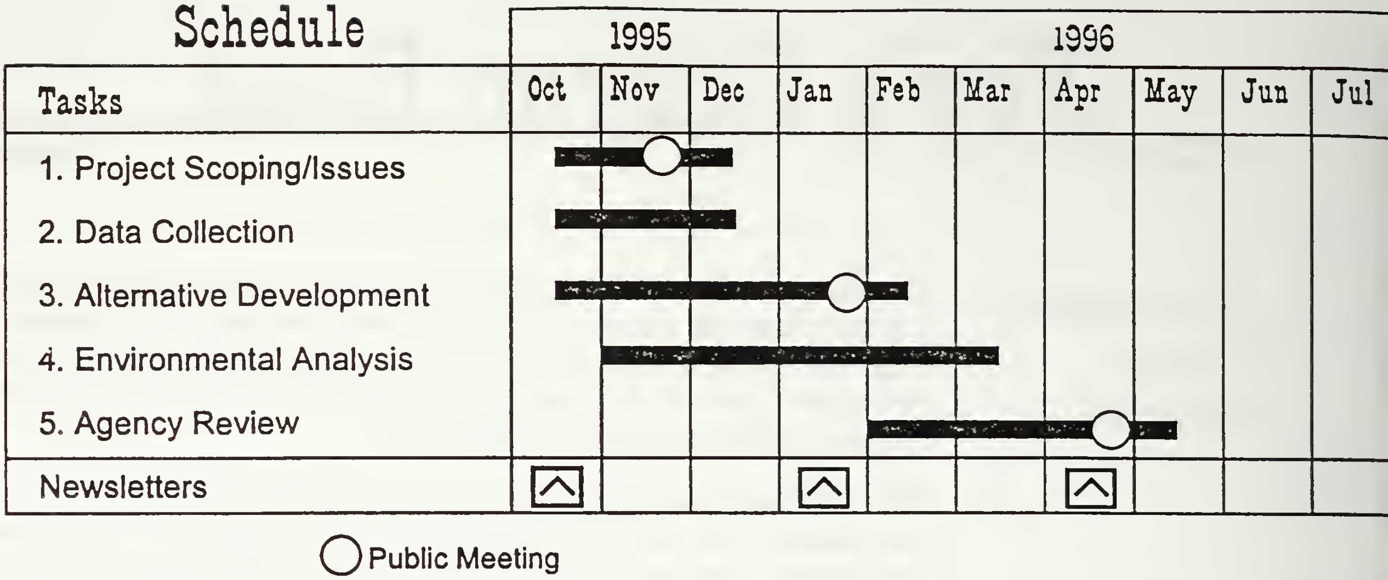
Jeanette Lostracco
Carter & Burgess
125 West Spruce
Missoula, MT 59802
721-1471 or (303) 820-4808

OR

Gordon Stockstad
Montana Department of Transportation
2701 Prospect Avenue
Helena, MT 59620
444-7223

In compliance with the Americans with Disabilities Act, the Outlaw Inn is accessible to disabled persons. For more information or for those who require accommodations for disabilities, call Stephanie Jackober at 721-1471.

Schedule



Foy's Canyon Road Environmental Process

First Public Workshop

Wednesday, November 15, 1995
5:30 - 8:00 P.M.
Outlaw Inn ♦ Remington Room
1701 Highway 93 South ♦ Kalispell

Carter & Burgess
125 West Spruce
Missoula, MT 59802

Stamp

Appendix B

Agency Correspondence

NATURAL RESOURCES CONSERVATION SERVICE
30 LOWER VALLEY ROAD
KALISPELL, MONTANA 59901 PHONE: 752-4242

TO: ANDREW GIBSON
CARTER BURGESS
216 16TH ST MALL
DENVER COLORADO 80202

NOVEMBER 9,1995

DEAR MR GIBSON,

AS PER YOUR REQUEST I HAVE STUDIED THE LOCATION FOR THE PROPOSED HIGHWAY PROJECT AS SHOWN ON THE MAP YOU PROVIDED ME. EXISTING SOILS INFORMATION INDICATES THAT PRIME FARMLANDS DO EXIST IN THE PROJECT AREA. PLEASE FIND ENCLOSED A MAP WITH PRIME FARMLAND DELINEATED FOR THIS AREA.

IF YOU HAVE ANY QUESTIONS PLEASE FEEL FREE TO CALL.

SINCERELY,

RICH PETTERSEN
RESOURCE CONSERVATIONIST

USDA Natural Resources
Conservation Service
Kalispell Soil Survey
30 Lower Valley Road
Kalispell, MT 59901

Memo to: Andrew Gibson, Carter-Burgess
Memo from: Gregory L. Snell
Soil Scientist Specialist
Subject: Foys Canyon Road - Prime Farmland
Date: March 29, 1996

I visited the proposed route of the Foys Canyon Road yesterday. The delineation observed in November was accurate, but not within the proposed right-of-way. The areas that appeared to be topographically suitable for prime farmland are either too wet, too frosty, or lack the water-holding capacity to qualify for prime farmland. This area is currently unsurveyed but formal soils information will be available within two years.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

	# of pages ▶ 1
To Andrew Gibson	From Greg Snell
Dept./Agency Carter Burgess	Phone # 406-752-4131
Fax # 1303 820 2401	Fax # 406-755-2270

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

Montana Department
of Transportation

2701 Prospect Avenue
PO Box 201001
Helena MT 59620-1001

RECEIV

DEC 08 1995

ENVIRONMENTAL BUREAU

November 22, 1995

Paul Putz
State Historic Preservation Office
1410 8th Avenue
P.O. box 201202
Helena, MT 59620-1202

CONCUR
MONTANA SHPO
DATE 6 Dec 95 SIGNED

Subject: RS 503-1(4)4
Foys Canyon Road
Control No. 0733

Enclosed is the cultural resource report, CRABS and site forms for the above project. Heritage Research Center of Missoula conducted the original cultural resource survey in 1985. Five sites (24FH193, 24FH194, 24FH196, 24FH199 and 24FH202) were recommended as ineligible to the National Register; your office agreed with those recommendations. Because a decade had passed since the original survey, Kathy McKay re-evaluated the five previously recorded sites and inventoried two additional properties. For one site (24FH768), the owner requested that the site form be kept confidential; it is included as a separate enclosure. McKay recommends, and we agree, that the five previously recorded sites are still ineligible for the National Register of Historic Places. She has also recommended (and we agree) that both 24FH197 and 24FH768 are ineligible for the National Register. We request your concurrence.

If you have any questions, please contact me at 444-6258.

Jon Axline

Jon Axline, Historian
Environmental Services

Enclosures

cc: James Weaver, P.E., Missoula District Administrator
Carl Peil, P.E., Preconstruction Bureau
Joel Marshik, P.E., Environmental Services
Gordon Stockstad, Resources Section
Jeanette Lostracco, Carter-Burgess w/attachment
Tony Incashola, Flathead Culture Committee "
Patricia Hewankorn, Kootenai Culture Committee "

Flathead County
Board of Commissioners
(406) 758-5503

Howard W. Gipe
Sharon L. Stratton
Robert W. Watne

April 12, 1996

Mr. Scott Richmond
Carter & Burgess, Inc.
216 16th Street Mall
Denver, Colorado 80202

RE: Foys Canyon Road Project

Dear Mr. Richmond:

In response to your questions regarding the Foys Canyon Road project, please be advised we will not make any recommendations for alternatives. However, we will consider the final recommendations of the consultants and the Montana Department of Transportation.

Sincerely,
BOARD OF COMMISSIONERS
FLATHEAD COUNTY, MONTANA

Sharon L Stratton
Sharon L. Stratton, Chairman

Robert W Watne
Robert W. Watne, Member

H W Gipe
Howard W. Gipe, Member

FCBC:ecn

**Montana Department
of
Fish, Wildlife & Parks**

1420 East Sixth Avenue
Helena, Montana 59620

March 1, 1996

Jeanette Lostracco, AICP
Project Manager
Carter & Burgess, Inc.
216 - 16th Street Mall
Denver, Colorado 80202

Re: RS 503- 1(4)4
Control No. 0733
Foy's Canyon Road (SW of Kalispell)

Dear Jeanette:

We have reviewed the above-mentioned proposed project area and would like to bring to your attention the existence of Lone Pine State Park near or in the project boundary of the proposed project. The project report you provided identified Flathead County Herron property as being adjacent to the project and that it will not be impacted by the proposed project.

Both of these properties are protected by Section 6(f) of the LWCF Act. If any part of the Lone Pine SP property will be affected by the project, we will need to work with National Park Service to mitigate the impacts.

Let me know if you feel there may be any potential impacts, you can contact me at 406-444-3750. Also, please keep Dan Vincent, our Region 1 Supervisor in Kalispell informed as the project develops.

Thank you for the opportunity to comment.

Sincerely,

Mary Ellen McDonald

MARY ELLEN McDONALD
Program Officer
Resource & Recreation Bureau
Parks Division

cc: Region 1 Supervisor
Bob Norwood, Flathead County

Montana Department
of
Fish, Wildlife & Parks

Region One, 490 N. Meridian
Kalispell, MT 59901
(406) 752-5501
FAX: (406) 257-0349
Ref: MD025.96
November 21, 1995

Ginger Thomas Consulting
502 Livingston Avenue
Missoula, MT 59801

Dear Ginger:

On November 20, we conducted a quick survey of Patrick Creek at the upper road crossing. Using a backpack electrofishing unit, we sampled roughly 100-150 meters of stream. This effort was in response to your request for fisheries information. Although this survey did shed some light on the fisheries component, I must stress that this quick look should not be considered a complete survey of the drainage. A more extensive survey is needed to determine presence or absence of trout species in Patrick Creek.

We collected 29 eastern brook trout (*Salvelinus fontinalis*) and observed a number of other trout which we were unable to capture. As you are aware the streambanks are a brush jungle, making netting fish difficult. Captured brook trout ranged in size from 62 to 152 mm in total length. The resident trout appeared to be fairly abundant, although no density estimate was attempted. We did not capture any westslope cutthroat trout (*Oncorhynchus clarki lewisi*), although the survey was not extensive and did not determine absence.

I hope this information is helpful. If I uncover more fisheries information, I will pass it along. If you have questions, please call.

Sincerely,

Mark Deleray
Fisheries Biologist

/ss